

MT LEGISLATIVE HISTORY

Chapter 464 1987

Bill H _____ S 315

Original bill & hist. ✓c

H. Committee on _____

S. Committee on _____

Hearing Date(s) _____ c

Hearing Date(s) 2/14 ✓c

3/9 ✓c

2/17 ✓c

_____ c

2/18 ✓c

_____ c

_____ c

Date Out 3/26 ✓c

2/21 ✓c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

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OF MONTANA

SENATE BILL NO. 315

INTRODUCED BY B. WILLIAMS, THAYER, C. SMITH, DARKO, CODY,
BARDANOUVE, DONALDSON, HIRSCH, M. WILLIAMS, KOLSTAD,
PISTORIA, FARRELL, MERCER, THOMAS, WEEDING, STANG, HARPER,
RASMUSSEN, BRANDEWIE, GALT, LYBECK, NATHE, SPAETH, NORMAN,
J. BROWN, NEUMAN, KITSELMAN, BENGTSON, PECK, GILBERT,
KEATING, HARRINGTON, ABRAMS, GLASER, HAMMOND, VAUGHN,
BECK, JENKINS, GRADY, MARKS, MANUEL, HIMSL, SCHYE,
CORNE', PETERSON, WALLIN, GRINDE, SIMON,
JONES, CONNELLY, HOLLIDAY, ECK

BY REQUEST OF THE GOVERNOR

IN THE SENATE

FEBRUARY 10, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

FEBRUARY 21, 1987

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

STATEMENT OF INTENT ADOPTED.

FEBRUARY 24, 1987

PRINTING REPORT.

SECOND READING, DO PASS AS AMENDED.

FEBRUARY 25, 1987

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 44; NOES, 6.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987

INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & LABOR.

MARCH 27, 1987

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987

SECOND READING, CONCURRED IN.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 70; NOES, 29.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

MONTANA STATE SENATE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATURE

COMMITTEE MEMBERS: Senator John "J.D." Lynch, Chairman
 Senator Gene Thayer, Vice Chairman
 Senator Richard Manning
 Senator Thomas Keating
 Senator Chet Blaylock
 Senator Delwyn Gage
 Senator Jack Haffey
 Senator Jack Galt

STAFF ATTORNEY: Tom Gomez

COMMITTEE SECRETARY Julie Rademacher

BOOK: 1 of 1

INCLUSIVE DATES: January 4, 1987 - April 23, 1987

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
299	2/24/87	3/13/87	3/13/87					3/13/87			
313	2/24/87	3/13/87	3/13/87							3/13/87	
314	2/24/87	3/13/87	tabled 3/13/87								
315 ✓	3/3/87	3/9/87	3/26/87							3/26/87	
318	2/23/87	3/18/87	3/18/87					3/18/87			
319	2/24/87	3/13/87	tabled 3/13/87								
328	3/3/87	3/10/87	3/26/87							3/26/87	
341	3/3/87	3/10/87	3/20/87							3/20/87	
353	3/13/87	3/20/87	3/26/87							3/26/87	
359	3/3/87	3/18/87	3/18/87							3/18/87	
360	3/3/87	3/18/87	3/20/87					3/20/87			
364	3/03/87	3/11/87	3/11/87					3/11/87			
371	3/13/87	3/20/87	3/26/87							3/26/87	
374	2/24/87	3/17/87	3/17/87					3/17/87			

CHAIRMAN JOHN "J.D." LYNCH
NORMAL E==> SITE: ROOM 413/415

DAYS: T-T-S

TIME: 1:00 P.M.

SECRETARY-JULIE RADEMACHE

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0157	1/20	1/29	01/29/87	ADVERSE REPORT	01/20/87	01/29/87
MANNING, RICHARD E.			WORKERS' COMPENSATION PLAN 2 EMPLOYER GIVE 20 DAYS NOTICE IF CANCELS POLICY			
SB0169	1/21	1/27	01/27/87; 02/12/87	4/4 tie	01/21/87	
KEATING, THOMAS F.			REPEAL LAW REQUIRING DEPT OF ADMIN. TO SET EQUAL PAY FOR COMPARABLE WORTH			
SB0234	1/27	2/05	02/05/87; 02/12/87	4/4 tie		
HALLIGAN, MIKE			ALLOW LABOR COMMISSIONER DISCRETION IN HANDLING WAGE CLAIM ASSIGNMENTS			
SB0242	1/29	2/03	02/03/87; 02/05/87	DO PASS	01/29/87	02/05/87
LYNCH, JOHN (J.D.)			ALLOW WORKERS' COMPENSATION DIVISION ACCESS TO EMPLOYER PREMISES			
SB0280	2/05	2/12	02/12/87; 02/17/87	PASS AS AMENDED	02/04/87	02/17/87
MCCALLUM, GEORGE			OUT-OF-STATE WORKER WORKING IN STATE SUBJECT TO MONTANA WORKERS' COMP. LAWS			
SB0313	2/10	2/17	02/17/87	DO PASS	02/10/87	02/17/87
BLAYLOCK, CHET			REVISE PROCEDURE FOR DETERMINING STATUS AS AN INDEPENDENT CONTRACTOR			
SB0314	2/10	2/17	02/17/87	PASS AS AMENDED	02/10/87	02/17/87
HAMMOND, H.W. (SWEDE)			EXCLUDE FAIR WORKERS FROM PAYMENT OF OVERTIME COMPENSATION			
SB0315 ✓	2/10	2/14	2/14; 2/17; 2/18; 2/19; 2/21	PASS AS AMENDED	02/10/87	02/21/87
WILLIAMS, BOB			GENERALLY REVISE WORKERS' COMPENSATION LAWS			
SB0319	2/11	2/19	02/19/87	DO PASS	02/11/87	02/17/87
MAZUREK, JOSEPH P.			EMPLOYMENT OF WATER COMMISSIONER EXEMPT FROM WORKERS' COMPENSATION COVERAGE			
SB0330	2/12	2/14	02/14/87		02/11/87	
VAN VALKENBURG, FRED			GENERALLY REVISE WORKERS' COMPENSATION LAWS			
SB0350	2/16	2/19	02/19/87	TABLED	02/17/87	
WALKER, MIKE			LICENSURE OF BOILER AND PRESSURE VESSEL INSTALLERS BY BOARD OF PLUMBERS			

1 *M. Williams* *Senate* *Hurst* *Boudana* BILL NO. *315* *Cardo* *Robinson*

2 INTRODUCED BY *B. Williams* *House* *Clark* *Kistner*

3 BY REQUEST OF THE GOVERNOR *Brundage* *W. J. Brown*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE *Brady*

5 WORKERS' COMPENSATION LAWS; TO CREATE A BOARD OF INDUSTRIAL *W. J. Brown*

6 INSURANCE; TO ABOLISH THE WORKERS' COMPENSATION COURT AND *Brady*

7 THE BOARD OF LABOR APPEALS; AMENDING SECTIONS 2-15-1014, *W. J. Brown*

8 19-12-401, 39-51-201, 39-51-1304, 39-51-2402, 39-51-2405 *Brady*

9 THROUGH 39-51-2407, 39-71-116, 39-71-118, 39-71-119, *W. J. Brown*

10 39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414, *Brady*

11 39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH *W. J. Brown*

12 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708, *Brady*

13 39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741, *W. J. Brown*

14 39-71-803, 39-71-1003, 39-71-2106, 39-71-2902, 39-71-2905, *Brady*

15 39-72-102, 39-72-610, 39-72-612, 39-72-613, 45-6-301, *W. J. Brown*

16 50-16-311, 53-9-106, AND 53-9-131, MCA; REPEALING SECTIONS *Brady*

17 2-15-1014, 2-15-1704, 39-51-305, 39-51-310, 39-51-2403, *W. J. Brown*

18 39-51-2404, 39-51-2409, 39-51-2410, 39-71-104, 39-71-121, *Brady*

19 39-71-122, 39-71-410, 39-71-705 THROUGH 39-71-707, *W. J. Brown*

20 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, *Brady*

21 39-71-1005, 39-71-2901 THROUGH 39-71-2909, AND 39-72-104, *W. J. Brown*

22 MCA; AND PROVIDING APPLICABILITY DATES AND EFFECTIVE DATES."

23

24

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Declaration of public policy.

2 For the purposes of interpreting and applying Title 39,
3 chapters 71 and 72, the following is the public policy of
4 this state:

5 (1) It is an objective of the Montana workers'
6 compensation system to provide, without regard to fault,
7 wage replacement and medical benefits to a worker suffering
8 from a work-related injury or disease. Wage-loss benefits
9 are not intended to make an injured worker whole; they are
10 intended to assist a worker at a reasonable cost to the
11 employer. Within that limitation, the wage-loss benefit
12 should bear a reasonable relationship to actual wages lost
13 as a result of a work-related injury or disease.

14 (2) A worker's removal from the work force due to a
15 work-related injury or disease has a negative impact on the
16 worker, the worker's family, the employer, and the general
17 public. Therefore, it is an objective of the workers'
18 compensation system to return a worker to work as soon as
19 possible after the worker has suffered a work-related injury
20 or disease.

21 (3) Montana's workers' compensation and occupational
22 disease insurance systems are intended to be primarily
23 self-administering. Claimants should be able to speedily
24 obtain benefits, and employers should be able to provide
25 coverage at reasonably constant rates. To meet these

1 objectives, the system must be designed to minimize reliance
2 upon lawyers and the courts to obtain benefits and interpret
3 liabilities.

4 (4) Title 39, chapters 71 and 72, must be construed
5 according to their terms and not liberally in favor of any
6 party.

7 NEW SECTION. Section 2. Board of industrial insurance
8 -- allocation -- composition -- quasi-judicial -- salaries
9 -- purpose -- expenses -- rules. (1) There is a board of
10 industrial insurance.

11 (2) The board is allocated to the department of labor
12 and industry for administrative purposes only as provided in
13 2-15-121. However, the board may hire its own personnel.

14 (3) The board is composed of three members appointed
15 by the governor as prescribed in 2-15-124. However, on [the
16 effective date of this section], one member must be
17 appointed to a term ending December 31, 1990, and two
18 members must be appointed to terms ending December 31, 1992.

19 (4) The board is designated a quasi-judicial board for
20 the purposes of 2-15-124. In addition to other benefits
21 provided state employees, each member of the board must
22 receive an annual salary equivalent to 80% of that of the
23 commissioner of labor and industry. While in office, a
24 member of the board shall devote full time to board duties
25 and may not engage in any other profession, occupation, or

1 business.

2 (5) The purpose of the board is to review and decide
3 disputes arising out of the workers' compensation,
4 occupational disease, and unemployment insurance laws of
5 this state as provided in Title 39, chapters 51, 71, and 72.

6 (6) All expenditures of the board, including but not
7 limited to salaries, benefits, travel expenses, rent,
8 equipment, and supplies, must be paid out of the workers'
9 compensation administration fund and the unemployment
10 insurance administration account of the federal special
11 revenue fund.

12 (7) The board has the authority to adopt any rules
13 necessary for the performance of its duties.

14 NEW SECTION. Section 3. Transition schedule -- terms
15 -- prehearing orders -- equipment and supplies. Beginning on
16 [the effective date of this section], the judge of the
17 workers' compensation court, the members of the board of
18 labor appeals, the commissioner of labor and industry, and
19 the members of the board of industrial insurance shall
20 cooperate as follows to assure a smooth transfer of duties,
21 personnel, equipment, and supplies:

22 (1) The board of industrial insurance must be
23 appointed and activated on [the date of passage and approval
24 of this section]. On July 1, 1987, the department and the
25 board of industrial insurance shall acquire jurisdiction

1 over all cases not yet brought to hearing by the workers'
 2 compensation court or board of labor appeals. The terms of
 3 the workers' compensation judge and members of the board of
 4 labor appeals expire when decisions have been written on all
 5 cases brought to hearing prior to July 1, 1987, and any
 6 other necessary business is concluded, except that the terms
 7 expire no later than December 31, 1987. Any decision or
 8 other business not concluded by the court or board of labor
 9 appeals on December 31, 1987, comes under the jurisdiction
 10 of the board of industrial insurance.

11 (2) The workers' compensation court and board of labor
 12 appeals shall accept petitions and continue to conduct
 13 prehearing proceedings through June 30, 1987. When, on July
 14 1, 1987, the board of industrial insurance assumes
 15 jurisdiction over cases that have been filed with but not
 16 heard by the workers' compensation court and board of labor
 17 appeals, the parties to a case in which there have been
 18 prehearing orders, the department, and the board of
 19 industrial insurance are bound by the prehearing orders of
 20 the workers' compensation court or board of labor appeals.

21 (3) On July 1, 1987, all equipment and supplies of the
 22 workers' compensation court and the board of labor appeals
 23 are transferred to the department. The department shall
 24 provide staff, equipment, and supplies as necessary to the
 25 workers' compensation judge and the board of labor appeals

1 during the transition period from July 1, 1987, through
 2 December 31, 1987.

3 NEW SECTION. Section 4. Department to appoint hearing
 4 examiners -- authority -- rules. (1) The department shall
 5 appoint impartial hearing examiners to hear and decide
 6 disputed claims as necessary for the proper administration
 7 of chapters 51, 71, and 72 of this title. A hearing examiner
 8 hearing disputes arising under chapter 51 must be appointed
 9 in accordance with merit system principles.

10 (2) No person may participate on behalf of the
 11 department in any case in which he is an interested party.
 12 The department may designate an alternate to serve in the
 13 absence or disqualification of a hearing examiner.

14 (3) Department hearing examiners may administer oaths
 15 or affirmations, issue subpoenas and compel testimony as
 16 provided in 2-4-104, provide for discovery, regulate the
 17 schedule and course of hearings, and direct parties to take
 18 part in prehearing conferences.

19 (4) The department may adopt such rules as are
 20 necessary to provide for procedures before the hearing
 21 examiners.

22 NEW SECTION. Section 5. Jurisdiction. (1) Department
 23 hearing examiners have jurisdiction over a dispute:

24 (a) arising under chapter 51 of this title after
 25 remedies provided therein have been exhausted; and

1 (b) arising under chapters 71 and 72 of this title
2 concerning benefits, except if a provision in chapter 71 or
3 72 gives the division of workers' compensation original
4 jurisdiction.

5 (2) The division of workers' compensation has
6 jurisdiction over a dispute:

7 (a) arising under chapters 71 and 72 not concerning
8 benefits; or

9 (b) if a specific provision of chapter 71 or 72 gives
10 the division original jurisdiction.

11 (3) An appeal is to the board, whether from an order
12 or determination of the division of workers' compensation or
13 from a decision of a department hearing examiner.

14 (4) (a) The board has continuing jurisdiction over all
15 prior orders of the department hearing examiners and of the
16 board issued under chapters 71 and 72 of this title. It may
17 modify a prior order for good cause and on a showing by the
18 claimant or insurer that the conditions or circumstances of
19 the claimant have changed.

20 (b) Under chapters 71 and 72 of this title the board
21 may, on petition of a claimant or an insurer showing that
22 the claimant's disability has changed, review, diminish, or
23 increase the benefits awarded by the workers' compensation
24 judge prior to January 1, 1988, or received under a
25 settlement agreement entered into prior to July 1, 1987.

1 NEW SECTION. Section 6. Decision of hearing examiner
2 -- appeal -- evidence. (1) (a) In a case arising under
3 chapter 51 of this title regarding unemployment insurance, a
4 hearing examiner, after a hearing, shall promptly make
5 findings of fact and conclusions of law and on the basis
6 thereof affirm, modify, or reverse the determination or
7 redetermination.

8 (b) The hearing examiner shall furnish to each party a
9 copy of the decision and supporting findings of fact and
10 conclusions of law.

11 (c) The decision is final unless a party initiates
12 further review under [section 7] within 10 days after notice
13 of the decision was mailed to the party's last-known
14 address. This period may be extended by the board for good
15 cause.

16 (2) (a) In a case arising under chapter 71 or 72 of
17 this title regarding workers' compensation and occupational
18 disease insurance, the parties may pursue mediation under
19 [section 23] or the hearing examiner may refer the parties
20 for such mediation. If mediation does not occur, the hearing
21 examiner, after a hearing, shall promptly make findings of
22 fact, conclusions of law, and a proposed order that must be
23 furnished to each party.

24 (b) The proposed order is final and binding unless a
25 party initiates further review under [section 7] within 20

1 days after notice is mailed to the last-known address of the
2 party. This period may be extended by the board for good
3 cause.

4 (3) In a hearing before a hearing examiner, the common
5 law and statutory rules of evidence do not apply.

6 (4) (a) In all cases, findings of fact must be based
7 exclusively on the evidence in the record and on matters
8 officially noticed. If findings of fact are set forth in
9 statutory language, they must be accompanied by a concise
10 and explicit statement of the underlying facts supporting
11 the findings.

12 (b) Each conclusion of law must be supported by legal
13 authority, a reasoned opinion, or both.

14 NEW SECTION. Section 7. Appeal to board. (1) (a) An
15 interested party who is dissatisfied with a decision of a
16 hearing examiner, or of the division of workers'
17 compensation if the division has initial jurisdiction, may
18 appeal to the board.

19 (b) The department or division of workers'
20 compensation shall promptly transmit to the board all
21 records pertinent to the appeal.

22 (2) The board must confine its review to the record
23 before the hearing examiner or the division, except that the
24 board may allow a party to present additional evidence if
25 the board finds:

1 (a) the additional evidence is material; and

2 (b) there was a good reason for the party's failure to
3 present the offered evidence to the hearing examiner or the
4 division.

5 (3) The board may remand a case to the department
6 hearing examiner or the division if the board finds that
7 further proceedings at that level are appropriate.

8 (4) The board may reject the conclusions of law and
9 interpretation of administrative rules of the hearing
10 examiner or division but may not reject or modify the
11 findings of fact unless it determines from the review of the
12 record and states with particularity in the order that the:

13 (a) findings were not based on competent substantial
14 evidence; or

15 (b) the proceedings on which the findings were based
16 did not comply with essential requirements of law.

17 (5) When the board renders a decision and furnishes a
18 copy of the decision to each party and to the department or
19 the division, the decision is final unless a party requests
20 a rehearing within 10 days or initiates judicial review
21 within 30 days of the date the final decision was mailed to
22 the party's last-known address.

23 NEW SECTION. Section 8. Finality of board's decision
24 -- judicial review. (1) In the absence of an appeal as
25 provided in [section 7], a decision of the board is final 30

1 days after the date of mailing the decision to the party's
2 last-known address.

3 (2) (a) Within 30 days after the date of mailing of
4 the board's final decision, a party may seek judicial review
5 of the decision by bringing an action in the district court
6 of the county in which the party resides. On its own motion,
7 the department, division of workers' compensation, division
8 of unemployment insurance, or board must be made a party.

9 (b) The petition must be served on the commissioner
10 and all interested parties in the manner provided in the
11 Montana Rules of Civil Procedure, which require under Rule
12 4D(2)(h) that a copy be served on the attorney general.

13 (3) Except as provided in subsection (2), the
14 provisions of Title 2, chapter 4, part 7, apply to a
15 judicial review proceeding.

16 NEW SECTION. Section 9. Witness fee. A witness
17 subpoenaed pursuant to this part is allowed a fee at a rate
18 fixed by the department or board. In the case of a dispute
19 arising under chapter 51 of this title, such fee is a part
20 of the expense of administering that chapter. In the case of
21 a dispute arising under chapter 71 or 72 of this title, the
22 fee must be paid by the party subpoenaing the witness unless
23 costs are awarded to a claimant as provided in those
24 chapters.

25 NEW SECTION. Section 10. Workers' compensation and

1 occupational disease claims -- increase in award for
2 unreasonable delay or unreasonable refusal to pay. (1) If,
3 in the case of a workers' compensation or occupational
4 disease claim, an insurer unreasonably delays or
5 unreasonably refuses payment either prior to or subsequent
6 to the issuance of an order, the hearing examiner, board, or
7 court may increase by a 20% penalty the amount of
8 compensation benefits due a claimant between the time
9 compensation benefits were delayed or refused and the date
10 of the order granting a claimant compensation benefits.
11 This penalty may be imposed only once for the same period.

12 (2) The hearing examiner, board, or court shall
13 determine the issue of unreasonable delay or unreasonable
14 refusal to pay. Such finding may constitute good cause to
15 rescind, alter, or amend an order, decision, or award
16 previously made to add the penalty provided herein.

17 (3) A finding of unreasonableness under this section
18 does not constitute a finding that the insurer acted in bad
19 faith or violated the unfair trade practices provisions of
20 Title 33, chapter 18.

21 Section 11. Section 39-51-201, MCA, is amended to
22 read:

23 "39-51-201. General definitions. As used in this
24 chapter, unless the context clearly requires otherwise, the
25 following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(4) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would

result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of ~~labor appeals provided for in Title 2, chapter 15, part 17~~ industrial insurance provided for in [section 2].

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a

1 deceased person which has or subsequent to January 1, 1936,
 2 had in its employ one or more individuals performing
 3 services for it within this state, except as provided under
 4 subsections (8) and (9) of 39-51-203. All individuals
 5 performing services within this state for any employing unit
 6 which maintains two or more separate establishments within
 7 this state are considered to be employed by a single
 8 employing unit for all the purposes of this chapter. Each
 9 individual employed to perform or assist in performing the
 10 work of any agent or employee of an employing unit is deemed
 11 to be employed by such employing unit for the purposes of
 12 this chapter, whether such individual was hired or paid
 13 directly by such employing unit or by such agent or
 14 employee, provided the employing unit has actual or
 15 constructive knowledge of the work.

16 (10) "Employment office" means a free public employment
 17 office or branch thereof operated by this state or
 18 maintained as a part of a state-controlled system of public
 19 employment offices or such other free public employment
 20 offices operated and maintained by the United States
 21 government or its instrumentalities as the department may
 22 approve.

23 (11) "Fund" means the unemployment insurance fund
 24 established by this chapter to which all contributions and
 25 payments in lieu of contributions are required and from

1 which all benefits provided under this chapter shall be
 2 paid.

3 (12) "Gross misconduct" means a criminal act, other
 4 than a violation of a motor vehicle traffic law, for which
 5 an individual has been convicted in a criminal court or has
 6 admitted or conduct which demonstrates a flagrant and wanton
 7 disregard of and for the rights or title or interest of a
 8 fellow employee or his employer.

9 (13) "Hospital" means an institution which has been
 10 licensed, certified, or approved by the state as a hospital.

11 (14) (a) "Institution of higher education", for the
 12 purposes of this part, means an educational institution
 13 which:

14 (i) admits as regular students only individuals having
 15 a certificate of graduation from a high school or the
 16 recognized equivalent of such a certificate;

17 (ii) is legally authorized in this state to provide a
 18 program of education beyond high school;

19 (iii) provides an educational program for which it
 20 awards a bachelor's or higher degree or provides a program
 21 which is acceptable for full credit toward such a degree, a
 22 program of postgraduate or postdoctoral studies, or a
 23 program of training to prepare students for gainful
 24 employment in a recognized occupation; and

25 (iv) is a public or other nonprofit institution.

1 (b) Notwithstanding any of the foregoing provisions of
2 this subsection, all colleges and universities in this state
3 are institutions of higher education for purposes of this
4 part.

5 (15) "State" includes, in addition to the states of the
6 United States of America, the District of Columbia, Puerto
7 Rico, the Virgin Islands, and the Dominion of Canada.

8 (16) "Unemployment insurance administration fund" means
9 the unemployment insurance administration fund established
10 by this chapter from which administrative expenses under
11 this chapter shall be paid.

12 (17) (a) "Wages" means all remuneration payable for
13 personal services, including commissions and bonuses, the
14 cash value of all remuneration payable in any medium other
15 than cash, and backpay received pursuant to a dispute
16 related to employment. The reasonable cash value of
17 remuneration payable in any medium other than cash shall be
18 estimated and determined in accordance with rules prescribed
19 by the department.

20 (b) The term "wages" does not include:

21 (i) the amount of any payment made to or on behalf of
22 an employee by an employer on account of:

23 (A) retirement;

24 (B) sickness or accident disability;

25 (C) medical and hospitalization expenses in connection

1 with sickness or accident disability; or

2 (D) death;

3 (ii) remuneration paid by any county welfare office
4 from public assistance funds for services performed at the
5 direction and request of such county welfare office.

6 (18) "Week" means a period of 7 consecutive calendar
7 days ending at midnight on Saturday.

8 (19) An individual's "weekly benefit amount" means the
9 amount of benefits he would be entitled to receive for 1
10 week of total unemployment."

11 Section 12. Section 39-51-1304, MCA, is amended to
12 read:

13 "39-51-1304. Lien for payment of unpaid contributions
14 -- levy and execution. Unpaid contributions have the effect
15 of a judgment against the employer, arising at the time the
16 contributions are due. The department may issue a lien
17 setting forth the amount of contributions due and accrued
18 interest and directing the clerk of the district court of
19 any county of the state to enter the certificate as a
20 judgment in the docket pursuant to 25-9-301. After the due
21 process requirements of 39-51-1109 and 39-51-2403 [section
22 6] have been satisfied, the department may enforce the
23 judgment pursuant to Title 25, chapter 13, except that the
24 department may enforce the judgment at any time within 10
25 years of the creation of the lien."

Section 13. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination -- appeal. (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof or shall refer such claim or any question involved therein to an appeals referee a hearing examiner who shall make his a decision with respect thereto in accordance with the procedure prescribed in 39-51-2403 [section 6]. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim shall be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

1 (4) (a) A determination or redetermination ~~shall be~~
2 ~~deemed is~~ final unless an interested party entitled to
3 notice thereof applies for reconsideration of the
4 determination or appeals therefrom within ~~5--days--after~~
5 ~~delivery-of-such-notification-or-within-7~~ 10 days after such
6 notification was mailed to ~~his~~ the party's last known
7 address, provided that such period may be extended for good
8 cause.

9 (b) Any appeal must be made to a department hearing
10 examiner."

11 Section 14. Section 39-51-2405, MCA, is amended to
12 read:

13 "39-51-2405. Prompt payment of claims. (1)
14 Notwithstanding any provision in 39-51-2402 ~~or--39-51-2404~~,
15 benefits shall be paid promptly in accordance with a
16 determination or redetermination under 39-51-2402 or the
17 decision of ~~an--appeals--referee~~ a hearing examiner, the
18 board, or a reviewing court ~~under--39-51-2404~~ upon the
19 issuance of such determination, redetermination, or decision
20 regardless of the pendency of the period to apply for
21 reconsideration, file an appeal, or petition for judicial
22 review ~~that-is-provided-with-respect-thereto-in-39-51-2404~~,
23 as the case may be, or the pendency of any such application,
24 filing, or petition, unless and until such determination,
25 redetermination, or decision has been modified or reversed

14

1 by a subsequent redetermination or decision, in which event
2 benefits shall be paid or denied for weeks of unemployment
3 thereafter in accordance with such modifying or reversing
4 redetermination or decision.

5 (2) If a deputy's determination or redetermination
6 allowing benefits is affirmed in any amount by ~~an--appeals~~
7 ~~referee~~ a hearing examiner or by the board or if a decision
8 of ~~an--appeals-referee~~ a hearing examiner allowing benefits
9 is affirmed in any amount by the board, such benefits shall
10 be paid promptly regardless of any further appeal or the
11 disposition of such appeal and no injunction, supersedeas,
12 stay, or other writ or process suspending the payment of
13 such benefits shall be issued by the board or any court.
14 Benefits shall not be paid for any weeks of unemployment
15 involved in such modification or reversal that begins after
16 such final decision."

17 Section 15. Section 39-51-2406, MCA, is amended to
18 read:

19 "39-51-2406. Continuing jurisdiction of department
20 over claims. The department shall have continuing
21 jurisdiction over all claims filed for benefits to revise,
22 modify, alter, cancel, and amend all orders, findings, and
23 determinations made therein at any time and shall not lose
24 such jurisdiction unless and until the jurisdiction of such
25 claim and subject matter thereof has been taken by a court

1 of competent jurisdiction in a proceedings proceeding filed
2 therein as provided for in ~~subsections-(2)-through-(6)-of~~
3 ~~39-51-2410~~ [section 8]."

4 Section 16. Section 39-51-2407, MCA, is amended to
5 read:

6 "39-51-2407. Procedure for disputed claims to be
7 prescribed by regulation. The manner in which disputed
8 claims shall be presented, the reports thereon required from
9 the claimant and from employers, and the conduct of hearings
10 by and appeals to hearing examiners shall be in accordance
11 with ~~regulations~~ rules prescribed by the department ~~or--the~~
12 ~~board~~ for determining the rights of the parties, whether or
13 not such ~~regulations~~ rules conform to common law or
14 statutory rules of evidence and other technical rules or
15 procedure."

16 Section 17. Section 39-71-116, MCA, is amended to
17 read:

18 "39-71-116. Definitions. Unless the context otherwise
19 requires, words and phrases employed in this chapter have
20 the following meanings:

21 (1) "Average weekly wage" means the mean weekly
22 earnings of all employees under covered employment, as
23 defined and established annually by the Montana department
24 of labor and industry. It is established at the nearest
25 whole dollar number and must be adopted by the division of

workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife-or-husband spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Board" means the board of industrial insurance provided for in [section 2].

~~(3)(4)~~ "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. ~~Any person hauling or assisting in hauling of---sugar---beets---or---grains,---in---case---of---emergency,---is considered engaged in casual employment.~~

~~(4)(5)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury, ~~and an illegitimate child legitimized prior to the injury.~~

(6) "Days" means calendar days, unless otherwise specified.

(7) "Department" means the department of labor and industry.

~~(5)(8)~~ "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

~~(6)(9)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(7)---"Husband"---or---"widower"---means---only---a---husband---or widower---living---with---or---legally---entitled---to---be---supported---by the deceased at the time of her injury.~~

~~(8)(10)~~ "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial ~~insurance--account~~ state compensation insurance fund under

1 compensation plan No. 3, or the uninsured employers' fund
2 provided for in part 5 of this chapter.

3 ~~{9}~~{11} "Invalid" means one who is physically or
4 mentally incapacitated.

5 {12} "Maximum healing" means the status reached when a
6 worker is as far restored medically as the permanent
7 character of the work-related injury will permit.

8 ~~{10}~~{13} "Order" means any decision, rule, direction,
9 requirement, or standard of the division or any other
10 determination arrived at or decision made by the division.

11 ~~{11}~~{14} "Payroll", "annual payroll", or "annual
12 payroll for the preceding year" means the average annual
13 payroll of the employer for the preceding calendar year or,
14 if the employer shall not have operated a sufficient or any
15 length of time during such calendar year, 12 times the
16 average monthly payroll for the current year; provided, that
17 an estimate may be made by the division for any employer
18 starting in business where no average payrolls are
19 available, such estimate to be adjusted by additional
20 payment by the employer or refund by the division, as the
21 case may actually be on December 31 of such current year.

22 ~~{12}~~{15} "Permanent partial disability" means a
23 condition ~~resulting--from-injury-as-defined-in-this-chapter~~
24 ~~that-results-in-the--actual--loss--of--earnings--or--earning~~
25 ~~capability--less--than--total--that-exists-after-the-injured~~

1 ~~worker-is-as-far-restored-as-the-permanent-character-of--the~~
2 ~~injuries--will--permit--Disability--shall-be-supported-by-a~~
3 ~~preponderance-of--medical--evidence-, after a worker has~~
4 ~~reached maximum healing, in which a worker:~~

5 {a} has a medically determined physical restriction as
6 a result of an injury as defined in 39-71-119; and

7 {b} is able to return to work in the worker's job pool
8 pursuant to one of the options set forth in [section 51] but
9 suffers impairment or partial wage loss, or both.

10 ~~{13}~~{16} "Permanent total disability" means a condition
11 resulting from injury as defined in this chapter ~~that~~
12 ~~results-in-the-loss-of-actual-earnings-or-earning-capability~~
13 ~~that-exists-after-the-injured-worker-is-as-far--restored--as~~
14 ~~the--permanent--character--of--the--injuries--will--permit--and~~
15 ~~which-results-in-the-worker-having-no-reasonable-prospect-of~~
16 ~~finding-regular-employment-of-any-kind-in-the--normal--labor~~
17 ~~market--Disability--shall-be-supported-by-a-preponderance-of~~
18 ~~medical-evidence-, after a worker reaches maximum healing,~~
19 ~~in which a worker is unable to return to work in the~~
20 ~~worker's job pool after exhausting all options set forth in~~
21 ~~[section 51].~~

22 ~~{14}~~{17} The term "physician" includes "surgeon" and in
23 either case means one authorized by law to practice his
24 profession in this state.

25 ~~{15}~~{18} "The plant of the employer" includes the place

of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

{16}{19} "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

{17}{20} "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

{18}{21} "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

{19}{22} "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. A worker shall be paid temporary total disability benefits during a reasonable period of retraining. Disability shall be supported by a preponderance of medical evidence reaches maximum healing.

{20} "Wages" means the average gross earnings received by the employee at the time of the injury for the usual

hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection {16} of this section, are considered wages.

{21} "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

{22}{23} "Year", unless otherwise specified, means calendar year."

Section 18. Section 39-71-119, MCA, is amended to read:

"39-71-119. Injury or injured and accident defined. {1} "Injury" or "injured" means:

{1}--a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection {2} of this section;

{2}--cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village, or fire district as a regular member of a lawfully established fire department, which diseases are caused by overexertion in times of stress or danger in the course of his employment by proximate exposure or by

1 cumulative-exposure-over-a-period-of--4--years--or--more--to
 2 heat,--smoke,--chemical-fumes,--or-other-toxic-gases,--Nothing
 3 herein-shall-be--construed--to--exclude--any--other--working
 4 person---who---suffers---a---cardiovascular,--pulmonary,--or
 5 respiratory-disease-while-in-the-course--and--scope--of--his
 6 employment.

7 (a) internal or external physical harm to the body;

8 (b) damage to prosthetic devices or appliances, except
 9 for damage to eyeglasses, contact lenses, dentures, or
 10 hearing aids; or

11 (c) death resulting from injury.

12 (2) An injury is caused by an accident. An accident
 13 is:

14 (a) an unexpected traumatic incident;

15 (b) identifiable by time and place of occurrence;

16 (c) identifiable by member or part of the body
 17 affected; and

18 (d) caused by a specific event on a single day or
 19 during a single work shift.

20 (3) "Injury" or "injured" does not mean a physical or
 21 mental condition arising from:

22 (a) emotional or mental stress; or

23 (b) a nonphysical stimulus or activity.

24 (4) "Injury" or "injured" does not include a disease
 25 that is not caused by an accident.

1 (5) A cardiovascular, pulmonary, respiratory, or other
 2 disease, cerebrovascular accident, or myocardial infarction
 3 suffered by a worker while in the course and scope of
 4 employment is an injury only if the accident is the primary
 5 cause of the physical harm in relation to other factors
 6 contributing to the physical harm."

7 NEW SECTION. Section 19. Wages defined. (1) "Wages"
 8 means the gross remuneration paid in money, or in a
 9 substitute for money, for services rendered by an employee.
 10 Wages include but are not limited to:

11 (a) commissions, bonuses, and remuneration at the
 12 regular hourly rate for overtime work, holidays, vacations,
 13 and sickness periods;

14 (b) board or lodging if it constitutes a part of the
 15 employee's remuneration, based on the actual value of the
 16 board, lodging, rent, or housing; and

17 (c) payments made to an employee on any basis other
 18 than time worked, including but not limited to piecework, an
 19 incentive plan, or profit-sharing arrangement.

20 (2) Wages do not include:

21 (a) employee travel expense reimbursements or
 22 allowances for meals, lodging, travel, and subsistence;

23 (b) special rewards for individual invention or
 24 discovery;

25 (c) tips and other gratuities received by the employee

1 in excess of those documented to the employer for tax
2 purposes;

3 (d) contributions made by the employer to a group
4 insurance or pension plan; or

5 (e) vacation or sick leave benefits accrued but not
6 paid.

7 (3) For compensation benefit purposes, the average
8 actual earnings for the four pay periods immediately
9 preceding the injury are the employee's wages, except if:

10 (a) the term of employment for the same employer is
11 less than four pay periods, in which case the employee's
12 wages are the hourly rate times the number of hours in a
13 week for which the employee was hired to work; or

14 (b) for good cause shown by the claimant, the use of
15 the four pay periods does not accurately reflect the
16 claimant's employment history with the employer, in which
17 case the insurer may use additional pay periods.

18 Section 20. Section 39-71-203, MCA, is amended to
19 read:

20 "39-71-203. Powers of division rules. (1) The
21 division is hereby vested with full power, authority, and
22 jurisdiction to do and perform any and all things, whether
23 herein specifically designated or in addition thereto, which
24 that are necessary or convenient in the exercise of any
25 power, authority, or jurisdiction conferred upon it under

1 this chapter.

2 (2) The division may adopt rules to carry out the
3 provisions of this chapter."

4 Section 21. Section 39-71-204, MCA, is amended to
5 read:

6 "39-71-204. Rescission, alteration, or amendment by
7 division of its orders, decisions, or awards ~~---limitation~~
8 ~~-- effect -- appeal~~. (1) ~~Except-as--provided--in--subsection~~
9 ~~{2}--the~~ The division ~~shall-have~~ has continuing jurisdiction
10 over all its orders, decisions, and awards and may, at any
11 time, upon notice, and after opportunity to be heard is
12 given to the parties in interest, rescind, alter, or amend
13 any such order, decision, or award made by it upon good
14 cause appearing therefor.

15 ~~{2}--The--division--or--the-workers--compensation-judge~~
16 ~~shall-not-have-power-to-rescind,-alter,-or-amend--any--final~~
17 ~~settlement--or-award-of-compensation-more-than-4-years-after~~
18 ~~the-same-has-been--approved--by--the--division--Rescinding,~~
19 ~~altering,-or--amending-a-final-settlement-within-the-4-year~~
20 ~~period-shall-be-by-agreement-between-the--claimant--and--the~~
21 ~~insurer--if--the-claimant-and-the-insurer-cannot-agree,-the~~
22 ~~dispute-shall-be-considered-a-dispute-for-which-the-workers-~~
23 ~~compensation-judge-has-jurisdiction-to-make-a-determination-~~
24 ~~Except-as--provided--in--39-71-2908,-the--division--or--the~~
25 ~~workers--compensation-judge--shall--not--have-the-power-to~~

~~rescind, alter, or amend any order approving a full and final compromise settlement of compensation.~~

(3) (2) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have has the same effect as original orders or awards.

(3) If a party is aggrieved by a division order, the party may appeal the dispute to the board under [section 7]."

NEW SECTION. Section 22. Filing true claim -- obtaining benefits through deception or other fraudulent means -- criminal penalty. (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

NEW SECTION. Section 23. Disputes -- jurisdiction -- evidence -- settlement requirements -- mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72 must be brought before a department hearing examiner as provided in chapter 1 of this title. However, a party may simultaneously request division mediation under

subsection (6).

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the division jurisdiction must be brought before the division.

(3) An appeal from a decision by a department hearing examiner or from a division order must be to the board under [section 7].

(4) The common law and statutory rules of evidence do not apply in a case brought to hearing before the division.

(5) Except as otherwise provided in this chapter, before a party may bring a dispute before a hearing examiner, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) A party may move to dismiss a petition if it does not comply with this subsection.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter.

(6) (a) Simultaneously with petitioning the department for resolution of a dispute, parties may pursue mediation by the division.

(b) If at any time a party objects to mediation, the mediation process must be terminated.

(c) Proceedings before a hearing examiner are suspended pending the mediation process.

(d) The division and department shall promulgate procedures to ensure prompt communication and coordination between those agencies in a case in which a party or hearing examiner requests mediation.

NEW SECTION. Section 24. Financial incentives to institute safety programs. The state compensation insurance fund, plan No. 3, and private insurers, plan No. 2, may provide financial incentives to an employer who implements a formal safety program. The insurance carrier may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

Section 25. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in

service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter, and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3), ~~except employment of a volunteer under 67-2-105;~~

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership ~~other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty regulation, or for services as a direct seller engaged in the sale of consumer products to customers primarily in the home, except as provided in subsection (3);~~

(e) employment of a broker or salesman performing

1 under a license issued by the board of realty regulation;

2 (f) employment of a direct seller engaged in the sale
3 of consumer products, primarily in the customer's home;

4 (g) employment for which a rule of liability for
5 injury, occupational disease, or death is provided under the
6 laws of the United States;

7 (h) employment of any person performing services in
8 return for aid or sustenance only, except employment of a
9 volunteer under 67-2-105;

10 (i) employment with any railroad engaged in
11 interstate commerce, except that railroad construction work
12 shall be is included in and subject to the provisions of
13 this chapter;

14 (j) employment as an official, including a timer,
15 referee, or judge, at a school amateur athletic event,
16 unless the person is otherwise employed by a school
17 district.

18 (3) A sole proprietor, or a working member of a
19 partnership who holds himself out or considers himself an
20 independent contractor, and--who--is--not--contracting--for
21 ~~agricultural-services-to-be-performed-on-a-farm-or-ranch, or~~
22 ~~for--broker--or--salesman-services-performed-under-a-license~~
23 ~~issued-by-the-board-of-realty-regulation, or-for-services-as~~
24 ~~a-direct-seller-engaged-in-the-sale-of-consumer-products--to~~
25 ~~customers--primarily--in--the--home~~ must elect to be bound

1 personally and individually by the provisions of
2 compensation plan No. 1, 2, or 3, but he may apply to the
3 division for an exemption from the Workers' Compensation Act
4 for himself. The application must be made in accordance with
5 the rules adopted by the division. The division may deny the
6 application only if it determines that the applicant is not
7 an independent contractor. When an application is approved
8 by the division, it is conclusive as to the status of an
9 independent contractor and precludes the applicant from
10 obtaining benefits under this chapter.

11 (4) (a) A private corporation shall provide coverage
12 for its officers and other employees under the provisions of
13 compensation plan No. 1, 2, or 3. However, pursuant to such
14 rules as the division promulgates and subject in all cases
15 to approval by the division, an officer of a private
16 corporation may elect not to be bound as an employee under
17 this chapter by giving a written notice, on a form provided
18 by the division, served in the following manner:

19 (i) if the employer has elected to be bound by the
20 provisions of compensation plan No. 1, by delivering the
21 notice to the board of directors of the employer and the
22 division; or

23 (ii) if the employer has elected to be bound by the
24 provisions of compensation plan No. 2 or 3, by delivering
25 the notice to the board of directors of the employer, the

1 division, and the insurer.

2 (b) If the employer changes plans or insurers, the
3 officer's previous election is not effective and the officer
4 shall again serve notice as provided if he elects not to be
5 bound.

6 (c) The appointment or election of an employee as an
7 officer of a corporation for the purpose of excluding the
8 employee from coverage under this chapter does not entitle
9 the officer to elect not to be bound as an employee under
10 this chapter. In any case, the officer must sign the notice
11 required by subsection (4)(a) under oath or affirmation, and
12 he is subject to the penalties for false swearing under
13 45-7-202 if he falsifies the notice.

14 †4†(5) Each employer shall post a sign in the
15 workplace at the locations where notices to employees are
16 normally posted, informing employees about the employer's
17 current provision of compensation insurance. A workplace is
18 any location where an employee performs any work-related act
19 in the course of employment, regardless of whether the
20 location is temporary or permanent, and includes the place
21 of business or property of a third person while the employer
22 has access to or control over such place of business or
23 property for the purpose of carrying on his usual trade,
24 business, or occupation. The sign will be provided by the
25 division, distributed through insurers or directly by the

1 division, and posted by employers in accordance with rules
2 adopted by the division. An employer who purposely or
3 knowingly fails to post a sign as provided in this
4 subsection is subject to a \$50 fine for each citation."

5 Section 26. Section 39-71-407, MCA, is amended to
6 read:

7 "39-71-407. Liability of insurers -- limitations. (1)
8 Every insurer is liable for the payment of compensation, in
9 the manner and to the extent hereinafter provided, to an
10 employee of an employer it insures who receives an injury
11 arising out of and in the course of his employment or, in
12 the case of his death from such injury, to his
13 beneficiaries, if any.

14 (2) (a) An insurer is liable for an injury as defined
15 in 39-71-119 if the claimant establishes it is more probable
16 than not that:

17 (i) a claimed injury has occurred; or

18 (ii) a claimed injury aggravated a preexisting
19 condition.

20 (b) Proof that it was medically possible that a
21 claimed injury occurred or that such claimed injury
22 aggravated a preexisting condition is not sufficient to
23 establish liability.

24 (3) An employee who suffers an injury or dies while
25 traveling is not covered by this chapter unless:

1 (a) (i) the employer furnishes the transportation or
 2 the employee receives reimbursement from the employer for
 3 costs of travel, gas, oil, or lodging as a part of the
 4 employee's benefits or employment agreement; and

5 (ii) the travel is necessitated by and on behalf of the
 6 employer as an integral part, or condition, of the
 7 employment; or

8 (b) the travel is required by the employer as part of
 9 the employee's job duties.

10 (4) An employee is not eligible for benefits otherwise
 11 payable under this chapter if the employee's use of alcohol
 12 or drugs not prescribed by a physician contributed to the
 13 cause of the injury or death. However, if the employer had
 14 knowledge of and failed to attempt to stop the employee's
 15 use of alcohol or drugs, this subsection does not apply."

16 Section 27. Section 39-71-414, MCA, is amended to
 17 read:

18 "39-71-414. Subrogation. (1) If an action is
 19 prosecuted as provided for in 39-71-412 or 39-71-413 and
 20 except as otherwise provided in this section, the insurer is
 21 entitled to subrogation for all compensation and benefits
 22 paid or to be paid under the Workers' Compensation Act. The
 23 insurer's right of subrogation is a first lien on the claim,
 24 judgment, or recovery.

25 (2) (a) If the injured employee intends to institute

1 the third party action, he shall give the insurer reasonable
 2 notice of his intention to institute the action.

3 (b) The injured employee may request that the insurer
 4 pay a proportionate share of the reasonable cost of the
 5 action, including attorneys' fees.

6 (c) The insurer may elect not to participate in the
 7 cost of the action. If this election is made, the insurer
 8 waives 50% of its subrogation rights granted by this
 9 section.

10 (d) If the injured employee or the employee's personal
 11 representative institutes the action, the employee is
 12 entitled to at least one-third of the amount recovered by
 13 judgment or settlement less a proportionate share of
 14 reasonable costs, including attorneys' fees, if the amount
 15 of recovery is insufficient to provide the employee with
 16 that amount after payment of subrogation.

17 (3) If an injured employee refuses or fails to
 18 institute the third party action within 1 year from the date
 19 of injury, the insurer may institute the action in the name
 20 of the employee and for the employee's benefit or that of
 21 the employee's personal representative. If the insurer
 22 institutes the action, it shall pay to the employee any
 23 amount received by judgment or settlement which is in excess
 24 of the amounts paid or to be paid under the Workers'
 25 Compensation Act after the insurer's reasonable costs,

including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation-judge board.

(6) (a) The insurer is entitled to full subrogation rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of the damages.

(b) If no survival action exists and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the

parties' apportionment of the damages, unless the insurer is a party to the settlement agreement."

Section 28. Section 39-71-502, MCA, is amended to read:

"39-71-502. Creation and purpose of uninsured employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2)."

Section 29. Section 39-71-503, MCA, is amended to read:

"39-71-503. Administration of fund. (1) The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Proper--surpluses--and--reserves--shall--be--kept--for--the--fund-- Surpluses and reserves shall not be kept for the fund. The division shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the

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1 fund shall be paid out of the money in the fund."

2 Section 30. Section 39-71-605, MCA, is amended to
3 read:

4 "39-71-605. Examination of employee by physician --
5 effect of refusal to submit to examination -- report and
6 testimony of physician -- cost. (1) (a) Whenever in case of
7 injury the right to compensation under this chapter would
8 exist in favor of any employee, he shall, upon the written
9 request of ~~his-employer-or~~ the insurer, submit from time to
10 time to examination by a physician or panel of physicians,
11 who shall be provided and paid for by such ~~employer--or~~
12 insurer, and shall likewise submit to examination from time
13 to time by any physician or panel of physicians selected by
14 the division ~~or-any-member-or-examiner-or-referee-thereof~~.

15 (b) The request or order for such examination shall
16 fix a time and place therefor, due regard being had to the
17 convenience of the employee and his physical condition and
18 ability to attend at the time and place fixed. The employee
19 shall be entitled to have a physician present at any such
20 examination. So long as the employee, after such written
21 request, shall fail or refuse to submit to such examination
22 or shall in any way obstruct the same, his right to
23 compensation shall be suspended. Any physician or panel of
24 physicians employed by ~~the--employer,~~ the insurer, or the
25 division who shall make or be present at any such

1 examination may be required to testify as to the results
2 thereof.

3 (2) In the event of a dispute concerning the physical
4 condition of a claimant or the cause or causes of ~~his the~~
5 injury or disability, if any, the division, at the request
6 of the claimant, ~~employer,~~ or insurer, as the case may be,
7 shall require the claimant to submit to such examination as
8 it may deem desirable by a physician or panel of physicians
9 within the state or elsewhere who have had adequate and
10 substantial experience in the particular field of medicine
11 concerned with the matters presented by the dispute. The
12 physician or panel of physicians making the examination
13 shall file a written report of findings with the division
14 for its use in the determination of the controversy
15 involved. The division shall pay the physician or panel of
16 physicians for the examination and shall be reimbursed by
17 the party who requested it.

18 (3) This section does not apply to impairment
19 evaluations provided for in [section 39]."

20 Section 31. Section 39-71-611, MCA, is amended to
21 read:

22 "39-71-611. Costs and attorneys' fees payable on
23 denial of claim or termination of benefits later found
24 compensable. ~~in-the-event-an-insurer-denies-liability-for--a~~
25 ~~claim--for--compensation-or-terminates-compensation-benefits~~

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~~and the claim is later adjudged compensable by the workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the workers' compensation judge.~~ (1) The insurer shall pay reasonable costs and attorney fees as established by the hearing examiner, board, or court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the hearing examiner, board, or court; and

(c) the hearing examiner, board, or court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."

Section 32. Section 39-71-612, MCA, is amended to read:

"39-71-612. Costs and attorneys' fees that may be assessed against an employer or insurer by workers' compensation judge. (1) If an employer or insurer pays or tenders submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought

before the workers' compensation judge hearing examiner, board, or court for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or tendered offered by the employer or insurer, a reasonable attorney's fee and costs as established by the workers' compensation judge hearing examiner, board, or court if the case has gone to a hearing may be awarded by the judge assessed against the insurer in addition to the amount of compensation.

~~(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the workers' compensation judge.~~

(2) An award of attorneys' fees and costs under subsection (1) may only be made if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade

1 practices provisions of Title 33, chapter 18."

2 Section 33. Section 39-71-613, MCA, is amended to
3 read:

4 "39-71-613. Regulation of attorneys' fees --
5 forfeiture of fee for noncompliance. (1) When an attorney
6 represents or acts on behalf of a claimant or any other
7 party on any workers' compensation claim, the attorney shall
8 submit to the division a contract of employment, on a form
9 provided by the division, stating specifically the terms of
10 the fee arrangement between the attorney and the claimant.

11 (2) The administrator of the division may regulate the
12 amount of the attorney's fee in any workers' compensation
13 case. In regulating the amount of the fee, the administrator
14 shall consider:

15 (a) the benefits the claimant gained due to the
16 efforts of the attorney;

17 (b) the time the attorney was required to spend on the
18 case;

19 (c) the complexity of the case; and

20 (d) any other relevant matter the administrator may
21 consider appropriate.

22 (3) If an attorney violates a provision of this
23 section, a rule adopted under this section, or an order
24 fixing an attorney's fee under this section, he shall
25 forfeit the right to any fee which he may have collected or

1 been entitled to collect."

2 Section 34. Section 39-71-614, MCA, is amended to
3 read:

4 "39-71-614. Calculation of attorney fees --
5 limitation. (1) The amount of an attorney's fee assessed
6 against an ~~employer-or~~ insurer under 39-71-611 or 39-71-612
7 must be based exclusively on the time spent by the attorney
8 in representing the claimant on the issues brought ~~before~~
9 ~~the--workers--compensation--judge~~ to hearing. The attorney
10 must document the time spent ~~and-give-the--documentation--to~~
11 ~~the--judge~~, but the hearing examiner, board, or court is not
12 bound by the documentation submitted.

13 (2) The judge hearing examiner, board, or court, shall
14 determine a reasonable attorney fee and assess costs. He--~~is~~
15 ~~not--bound-by-the-documentation-submitted-to-him-~~ The hourly
16 ~~fee-the-judge-applies~~ rate applied to the time spent must be
17 based on the attorney's customary and current hourly ~~fee~~
18 rate for legal work performed in this state, subject to a
19 maximum established by the division.

20 ~~(2)(3)~~ (3) This section does not restrict a claimant and
21 an attorney from entering into a contingency fee arrangement
22 under which the attorney receives a percentage of the amount
23 of compensation payments received by the claimant because of
24 the efforts of the attorney. However, an amount equal to any
25 fee and costs assessed against an ~~employer-or~~ insurer under

1 39-71-611 or 39-71-612 and this section must be deducted
2 from the fee an attorney is entitled to from the claimant
3 under a contingency fee arrangement."

4 NEW SECTION. Section 35. Employer not to terminate
5 worker for filing claim -- preference -- jurisdiction over
6 dispute. (1) An employer may not use as grounds for
7 terminating a worker the filing of a claim under this
8 chapter or chapter 72 of this title.

9 (2) If an injured worker is capable of returning to
10 work within 2 years from the date of injury and has received
11 a medical release to return to work, the worker must be
12 given a preference over new hires for a comparable position
13 that becomes vacant within such 2-year period if:

14 (a) the position is consistent with the worker's
15 physical condition and vocational abilities; and

16 (b) the worker is substantially equally qualified as
17 other applicants.

18 (3) This preference applies only to employment with
19 the employer for whom the employee was working at the time
20 the injury occurred.

21 (4) The division, department, and board do not have
22 jurisdiction to administer or resolve a dispute under this
23 section. Exclusive jurisdiction is with the district court.

24 Section 36. Section 39-71-701, MCA, is amended to
25 read:

1 "39-71-701. Compensation for injuries producing
2 temporary total disability. (1) Subject to the limitation in
3 39-71-736, a worker is eligible for temporary total
4 disability benefits when the worker suffers a total loss of
5 wages as a result of an injury and until the worker reaches
6 maximum healing.

7 (2) The determination of temporary total disability
8 must be supported by a preponderance of medical evidence.

9 ~~{1}~~(3) Weekly compensation benefits for injury
10 producing ~~total~~ temporary total disability shall be 66 2/3%
11 of the wages received at the time of the injury. The maximum
12 weekly compensation benefits shall not exceed \$110--beginning
13 July-1,--1973--Beginning-July-1,--1974--the--maximum--weekly
14 compensation--benefits--shall-not-exceed the state's average
15 weekly wage. ~~Total--temporary~~ Temporary total disability
16 benefits shall be paid for the duration of the worker's
17 temporary disability. The weekly benefit amount may not be
18 adjusted for cost of living as provided in 39-71-702(5).

19 ~~{2}~~(4) In cases where it is determined that periodic
20 disability benefits granted by the Social Security Act are
21 payable because of the injury, the weekly benefits payable
22 under this section are reduced, but not below zero, by an
23 amount equal, as nearly as practical, to one-half the
24 federal periodic benefits for such week, which amount is to
25 be calculated from the date of the disability social

security entitlement.

(5) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1989, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."

Section 37. Section 39-71-702, MCA, is amended to read:

"39-71-702. Compensation for injuries---producing permanent total permanent disability. (1) If a worker is no longer temporarily totally disabled and is unable to return to work due to injury, after exhausting all options set forth in [section 51], the worker is eligible for permanent total disability benefits. Such benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710 and [section 62].

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

~~(1)(3)~~ Weekly compensation benefits for an injury producing--total--permanent resulting in permanent total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. ~~Total permanent-disability-benefits-shall-be-paid-for-the-duration of-the-worker's-total-permanent-disability-~~

~~(2)(4)~~ In cases where it is determined that periodic

disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid, and each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the division over the state's average weekly wage adopted for the previous year, or 3%, whichever is less.

(6). Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."

Section 38. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for injuries causing partial disability. (1) ~~Weekly--compensation--benefits--for--injury producing--partial-disability-shall-be-66-2/3%-of-the-actual~~

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diminution-in-the--worker's--earning--capacity--measured--in
dollars,---subject--to--a--maximum--weekly--compensation--of
one-half-the-state's-average-weekly-wage;

(2)--The-compensation-shall-be-paid-during--the--period
of-disability,--not-exceeding,--however,--500-weeks-in-cases-of
partial---disability,---However,--compensation--for--partial
disability-resulting-from-the--loss--of--or--injury--to--any
member--shall--not--be-payable-for-a-greater-number-of-weeks
than-is-specified-in-39-71-705-for-the-loss-of--the--member.

A worker who has reached maximum healing and is not eligible
for permanent total disability benefits but who has a
medically determined physical restriction as a result of a
work-related injury may be eligible for an impairment award
and wage supplement benefits as follows:

(a) The following procedure must be followed for an
impairment award:

(i) Each percentage point of impairment is compensated
in an amount equal to 5 weeks times $66 \frac{2}{3}\%$ of the wages
received at the time of the injury, subject to a maximum
compensation rate of one-half of the state's average weekly
wage.

(ii) When a worker reaches maximum healing, an
impairment rating is rendered by an impairment evaluator as
provided for in [section 39]. Impairment benefits are
payable beginning the date of maximum healing.

(iii) An impairment award may be paid biweekly or in a
lump sum, at the discretion of the worker. Lump sums paid
for impairments are not subject to the requirements set
forth in 39-71-741, except that lump-sum conversions for
benefits not accrued may be recouped by the insurer as set
forth in 39-71-741(3). Benefits not accrued may be reduced
to present value at the rate set forth by the division in
39-71-741(3)(b).

(iv) If a worker becomes eligible for permanent total
disability benefits, the insurer may recover any lump-sum
advance paid to a claimant for impairment, as set forth in
39-71-741(3). Such right of recovery does not apply to
lump-sum benefits paid for the period prior to claimant's
eligibility for permanent total disability benefits.

(v) If a worker suffers additional injury, an
impairment award payable for the additional injury must be
reduced by the amount of a previous award paid for
impairment to the same part of the body.

(b) The following procedure must be followed for a
wage supplement:

(i) A worker must be compensated in weekly benefits
equal to $66 \frac{2}{3}\%$ of the difference between the worker's
actual wages received at the time of the injury and the
wages the worker is qualified to earn in the worker's job
pool, subject to a maximum compensation rate of one-half the

1 state's average weekly wage.

2 (ii) Eligibility for wage supplement benefits begins at
3 maximum healing and terminates at the expiration of 500
4 weeks minus the number of weeks for which a worker's
5 impairment award is payable, subject to 39-71-710. A
6 worker's failure to sustain a wage loss compensable under
7 subsection (1)(b)(i) does not extend the period of
8 eligibility. However, if a worker becomes eligible for
9 temporary total disability, permanent total disability, or
10 total rehabilitation benefits after reaching maximum
11 healing, the eligibility period for wage supplement benefits
12 is extended by any period for which a worker is compensated
13 by those benefits after reaching maximum healing.

14 (2) The determination of permanent partial disability
15 must be supported by a preponderance of medical evidence.

16 (3) Notwithstanding subsections (1) and (2), beginning
17 July 1, 1987, through June 30, 1989, the maximum weekly
18 compensation benefits for permanent partial disability may
19 not exceed \$149.50, which is one-half the state's average
20 weekly wage established July 1, 1986."

21 NEW SECTION. Section 39. Impairment evaluation --
22 ratings. (1) The division shall appoint impairment
23 evaluators under division rules that set forth the
24 qualifications of evaluators and the location of
25 examinations. An evaluator must be a physician licensed

1 under Title 37, chapter 3. The division may seek nominations
2 from the board of medical examiners.

3 (2) An impairment rating:

4 (a) is a purely medical determination and must be
5 rendered by an impairment evaluator after a claimant has
6 reached maximum healing;

7 (b) must be based on the current edition of the Guides
8 to Evaluation of Permanent Impairment published by the
9 American medical association; and

10 (c) must be expressed as a percentage of the whole
11 person.

12 (3) The procedure for obtaining an impairment rating
13 is as follows:

14 (a) On request of the claimant, insurer, or treating
15 physician, the division shall direct a claimant to an
16 evaluator for a rating. The evaluator shall:

17 (i) evaluate the claimant to determine the degree of
18 impairment, if any, that exists due to the injury; and

19 (ii) submit a report to the division, the claimant, and
20 the insurer.

21 (b) (i) Unless the following procedure is followed,
22 the insurer shall begin paying the impairment award, if any,
23 within 30 days of the evaluator's mailing of the report.

24 (ii) Either the claimant or the insurer, within 15 days
25 after the date of mailing of the report by the first

1 evaluator, may request that the claimant be evaluated by a
2 second evaluator. If a second evaluation is requested, the
3 division shall direct the claimant to a second evaluator,
4 who shall determine the degree of impairment, if any, that
5 exists due to the injury.

6 (iii) The reports of both examinations must be
7 submitted to a third evaluator, who may also examine the
8 claimant or seek other consultation. The three evaluators
9 shall consult with one another and then the third evaluator
10 shall submit a final report to the division, the claimant,
11 and the insurer. The final report must state the degree of
12 impairment, if any, that exists due to the injury.

13 (iv) Unless either party disputes the rating in the
14 final report as provided in subsection (5), the insurer
15 shall begin paying the impairment award, if any, within 45
16 days of the date of mailing of the report by the third
17 evaluator.

18 (4) The cost of an impairment evaluator is assessed to
19 a worker's insurer, except that the cost of obtaining the
20 final report of the second and third evaluator is assessed
21 to the requesting party.

22 (5) A party may dispute a final impairment rating
23 rendered under subsection (3)(b)(iii) by filing a petition
24 with a hearing examiner within 15 days of the evaluator's
25 mailing of the report.

1 (6) An impairment rating rendered under subsection (3)
2 is presumed correct. This presumption is rebuttable.

3 Section 40. Section 39-71-704, MCA, is amended to
4 read:

5 "39-71-704. Payment of medical, hospital, and related
6 services. (1) In addition to the compensation provided by
7 this chapter and as an additional benefit separate and apart
8 from compensation, the following shall be furnished:

9 (a) After the happening of the injury, the insurer
10 shall furnish, without limitation as to length of time or
11 dollar amount, reasonable services by a physician or
12 surgeon, reasonable hospital services and medicines when
13 needed, and such other treatment as may be approved by the
14 division for the injuries sustained.

15 (b) The insurer shall replace or repair prescription
16 eyeglasses, prescription contact lenses, prescription
17 hearing aids, and dentures that are damaged or lost as a
18 result of an injury, as defined in 39-71-119, arising out of
19 and in the course of employment.

20 (2) A relative value fee schedule for medical,
21 chiropractic, and paramedical services provided for in this
22 chapter, excluding hospital services, shall be established
23 annually by the workers' compensation division and become
24 effective in January of each year. The maximum fee schedule
25 must be adopted as a relative value fee schedule of medical,

chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules shall be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 41. Section 39-71-708, MCA, is amended to

read:

"39-71-708. Compensation for disfigurement. (1) The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed \$2,500, in addition to any other indemnity benefits payable under 39-71-705, 39-71-706, or 39-71-707 39-71-703.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and or of any benefits paid under 39-71-701 for temporary total disability."

Section 42. Section 39-71-710, MCA, is amended to read:

"39-71-710. Termination of total--disability benefits upon retirement. (1) If a claimant is receiving total disability or rehabilitation compensation benefits and the claimant receives--retirement is eligible to receive social security retirement benefits or disability--social--security benefits--paid--to--the--claimant--are--converted--by--law--to retirement--benefits, the claimant is considered to be retired and--no--longer--in--the--open--labor--market. When the claimant is considered retired, the liability of the insurer is ended for payment of such wage supplement, permanent total, and rehabilitation compensation benefits. This section--does--not--apply--to--permanent--partial--disability benefits--Medical--benefits--are--expressly--reserved--to--the

claimant. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits."

NEW SECTION. Section 43. Benefits not due while claimant is incarcerated. A claimant is not eligible for any disability or rehabilitation compensation benefits while the claimant is incarcerated as the result of conviction of a felony. The insurer remains liable for medical benefits. No time limit on benefits otherwise provided in this chapter is extended due to a period of incarceration.

Section 44. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, ~~as the case may be,~~ is entitled to the same compensation as though the death occurred immediately following the injury, ~~but the period during which the death benefit is paid shall be reduced by the period during or for which compensation was paid for the~~

injury. A beneficiary's eligibility for benefits commences after the date of death.

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(3).

(2) To beneficiaries as defined in subsections ~~(2)(a) through (2)(d)~~ of 39-71-116 39-71-116(2)(a) through 39-71-116(2)(d), weekly compensation benefits for an injury causing death are computed ~~at~~ 66 2/3% of the decedent's wages. The maximum weekly compensation ~~benefits benefit~~ may not exceed the state's average weekly wage. The minimum weekly compensation ~~for death benefit~~ is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections ~~(2)(e) and (2)(f)~~ of 39-71-116 39-71-116(2)(e) and 39-71-116(2)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a widow--or widower--for--life--or--until--remarriage--and--in--the--event--of--remarriage--2--years--benefits--must--be--paid--in--a--lump--sum--to the--widow--or--widower; surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(2)(b) through 39-71-116(2)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1989, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 45. Section 39-71-736, MCA, is amended to

read:

"39-71-736. Compensation -- from what date paid. (1) (a) No compensation may be paid for the first 5 6 days loss of wages due to an injury. If loss of wages continues for more than 5 days, compensation shall be paid from the date of injury. A claimant is eligible for compensation starting with the 7th day of wage loss.

(b) However, separate benefits of medical and hospital services shall be furnished from the date of injury.

(2) For the purpose of this section, an injured worker is not considered to have a wage loss if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period."

Section 46. Section 39-71-737, MCA, is amended to read:

"39-71-737. Compensation to run consecutively -- exceptions. (1) Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that indemnity benefits--under--39-71-705--through--39-71-708--and--temporary--total--disability--benefits--may--be--paid--concurrently. However,--subject--to--the--provisions--of--39-71-741,--this section does not prevent:

(a) the payment of a lump sum advance settlement

against---projected---future---permanent---partial---indemnity
benefits while---a---claimant---is---receiving---temporary---total
disability benefits, or

(b)---a settlement of a combination of different classes
of disability benefits into a lump sum or into a combination
of periodic and lump sum payments.

(2)---A controversy between a claimant and an insurer
regarding a settlement authorized under this section is a
dispute for which the workers' compensation judge has
jurisdiction to make a determination. impairment awards and
auxiliary rehabilitation benefits may be paid concurrently
with other classes of benefits, and wage supplement and
partial rehabilitation benefits may be paid concurrently."

Section 47. Section 39-71-741, MCA, is amended to
read:

"39-71-741. Compromise settlements and lump sum
payments -- division approval required limitation. (1)---The
biweekly payments provided for in this chapter may be
converted, in whole or in part, into a lump sum payment.
Regardless of the date of the injury or of a prior lump sum
payment, a lump sum conversion of permanent total biweekly
payments awarded or paid after April 15, 1985, must equal
the estimated present value of the total unpaid permanent
total biweekly payments, assuming interest at 7% per year,
compounded annually, unless the conversion improves the

financial condition of the worker or his beneficiary, as
provided in subsection (2)(b). If the estimated duration of
the compensation period is the remaining life expectancy of
the claimant or the claimant's beneficiary, the remaining
life expectancy must be determined by using the most recent
table of life expectancy in years as published by the United
States national center for health statistics.

(2)---The conversion can only be made upon the written
application of the injured worker or the worker's
beneficiary, with the concurrence of the insurer, and
approval of the conversion rests in the discretion of the
division as to the amount of the lump sum payment and the
advisability of the conversion. It is presumed that biweekly
payments are in the best interests of the worker or his
beneficiary. The approval or award of a lump sum conversion
by the division or the workers' compensation judge must be
the exception, not the rule, and may be given only if the
worker or his beneficiary demonstrates that his ability to
sustain himself financially is more probable with a whole or
partial lump sum conversion than with the biweekly payments
and his other available resources. The following procedure
must be used by the division and the workers' compensation
judge in determining whether a lump sum conversion of
permanent total biweekly payments will be approved or
awarded:

(a)--The--difference--between--the--present--discounted value-of-a-lump-sum-and-the-future--value--of--the--biweekly payments--cannot--be--the--only--grounds--for--approving--or awarding-a-lump-sum-conversion;

(b)--A-lump-sum-conversion-that-improves-the--financial condition--of--the-worker-or-his-beneficiary-over-what-would have-been--reasonably--expected--had--the-worker--not--been injured--or--died--can--be--approved--or-awarded-only-if-the lump-sum-conversion-is-limited-to-the-purchase-price-to--the insurer--of--an--annuity-that-would-yield-an-amount-equal-to the-biweekly-benefits-payable-over-the-estimated-duration-of the-compensation-period; The-worker-or-his-beneficiary--must demonstrate--the--financial--condition--that-would-have-been reasonably-expected;--taking--into--consideration--his--age; education;--work-experience; and-probable-job-promotions-and pay-increases;

(c)--If-the-existing-delinquent--or--outstanding--debts are-used-as-grounds-for-a-lump-sum-conversion; the-worker-or his--beneficiary--must-demonstrate-through-a-debt-management plan-that-a-lump--sum--for--that--purpose--is--necessary--to sustain-himself-financially;

(d)--If--a--business--venture--is-used-as-grounds-for-a lump-sum-conversion; the--worker--or--his--beneficiary--must demonstrate-through-a-business-plan-that-a-lump-sum-for-that purpose--is--necessary--to-sustain-himself-financially;--The

business-plan-must-at-least--show--the--feasibility--of--the business; given-the-market-conditions-in-the-intended-market area;--and--the--cash--that--will--be--available-to-him-on-a biweekly-basis--after--start-up--costs--and--other--business expenses--are-considered-throughout-the-expected-life-of-the venture;

(3)--If-the-division--finds--that--an--application--for lump-sum--conversion--does--not--adequately--demonstrate-the ability-of-the-worker-or-his-beneficiary-to-sustain--himself financially;--the--division--may--order;--at--the--insurer's expense;--financial;--medical;--vocational;--rehabilitation; educational;--or--other--evaluative--studies--to--determine whether-a-lump-sum-conversion-is-in-the-best-interest-of-the worker-or-his-beneficiary;

(4)--The--division--has--full--power;--authority;--and jurisdiction--to--allow--and--approve--compromises-of-claims under-this--chapter;--All--settlements--and--compromises--of compensation--provided--in-this-chapter--are-void-without-the approval-of-the-division; Approval-of-the-division--must--be in-writing;--The--division--shall--directly--notify--every claimant-of--any--division--order--approving--or--denying--a claimant's-settlement-or-compromise-of-a-claim;

(5)--A--controversy--between--a-claimant-and-an-insurer regarding-the-conversion-of-biweekly-payments--into--a--lump sum--is--considered--a-dispute--for--which--the--workers'

compensation-judge-has-jurisdiction-to-make-a-determination-
(1) If a claimant and an insurer dispute the compensability
of an injury, they may enter into a compromise and release
settlement. In such case, the insurer may make payment in a
lump sum without meeting the requirements set forth in
subsection (2). A compromise and release settlement may not
be reopened by the division, department, board, or court.
After the insurer's initial acceptance of liability for a
claim, a claim may not be compromised and released.

(2) Permanent total disability benefits may be
converted to a lump-sum payment. The total of all lump-sum
payments to a claimant may not exceed \$20,000. A conversion
may only be made upon the written application of the injured
worker with the concurrence of the insurer. Approval of the
lump-sum payment rests in the discretion of the division.
The approval or award of a lump-sum payment by the division,
board, or court must be the exception. It may be given only
if the worker has demonstrated financial need that:

(a) relates to the necessities of life or a
self-employment venture as set forth in [section 62]; and

(b) arises subsequent to the date of accident or
arises because of reduced income as a result of the
accident.

(3) (a) An insurer may recoup any lump-sum payment
amortized at the rate established by the division, prorated

biweekly over the projected duration of the compensation
period.

(b) The rate adopted by the division must be based on
the average rate for United States 10-year treasury bills in
the previous calendar year, rounded to the nearest whole
number.

(c) If the projected compensation period is the
claimant's lifetime, the life expectancy must be determined
by using the most recent table of life expectancy as
published by the United States national center for health
statistics.

(4) The division has full power, authority, and
jurisdiction to allow and approve compromise settlements or
lump-sum payments agreed to by workers and insurers. All
such compromise settlements and lump-sum payments are void
without the approval of the division. Approval by the
division must be in writing. The division shall directly
notify a claimant of a division order approving or denying a
claimant's compromise or lump-sum payment.

(5) Subject to [section 23], a dispute between a
claimant and an insurer regarding the conversion of biweekly
payments into a lump-sum payment is considered a dispute for
which a hearing examiner has jurisdiction to make a
determination. If an insurer and a claimant agree to a
compromise and release settlement under subsection (1) or to

1 a lump-sum payment under subsection (2) but the division
 2 disapproves, the parties may request the board to review the
 3 division's determination.

4 (6) In addition to providing information to the
 5 division prior to division approval, a worker must agree, as
 6 a condition of receiving a lump-sum payment, to provide any
 7 information regarding the expenditure of the lump-sum
 8 payment as the division may from time to time request."

9 Section 48. Section 39-71-803, MCA, is amended to
 10 read:

11 "39-71-803. Occupational deafness distinguished from
 12 traumatic loss of hearing. Occupational deafness as herein
 13 provided is distinguished from traumatic loss of hearing,
 14 ~~which is governed by the specific loss schedule provided for~~
 15 ~~in 39-71-705 may be compensated under parts 7 and 10 of this~~
 16 ~~chapter."~~

17 NEW SECTION. Section 49. Definitions. As used in this
 18 chapter, the following definitions apply:

19 (1) "Board of rehabilitation certification" means the
 20 nonprofit, independent, fee-structured organization that is
 21 a member of the national commission for health certifying
 22 agencies and that is established to certify rehabilitation
 23 practitioners.

24 (2) "Disabled worker" means one who has a medically
 25 determined restriction resulting from a work-related injury

1 that precludes the worker from returning to the job the
 2 worker held at the time of the injury.

3 (3) "I.W.R.P." means an individualized, written
 4 rehabilitation program prepared by the department of social
 5 and rehabilitation services.

6 (4) "Rehabilitation benefits" means benefits provided
 7 in [sections 59 through 61] and 39-71-1003.

8 (5) "Rehabilitation provider" means a rehabilitation
 9 counselor, other than the department of social and
 10 rehabilitation services, certified by the board for
 11 rehabilitation certification and designated by the insurer
 12 to the division.

13 (6) "Rehabilitation services" consists of a program of
 14 evaluation, planning, and delivery of goods and services to
 15 assist a disabled worker to return to work.

16 (7) (a) "Worker's job pool" means those jobs typically
 17 available for which a worker is qualified, consistent with
 18 the worker's age, education, vocational experience and
 19 aptitude and compatible with the worker's physical
 20 capacities and limitations as the result of the worker's
 21 injury. Lack of immediate job openings is not a factor to
 22 be considered.

23 (b) A worker's job pool may be either local or
 24 statewide, as follows:

25 (i) a local job is one either in a central city that

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1 has within its economically integrated geographical area a
2 population of less than 50,000 or in a city with a
3 population of more than 50,000 as determined by the
4 division; or

5 (ii) a statewide job is one anywhere in the state of
6 Montana.

7 Section 50. Section 39-71-1003, MCA, is amended to
8 read:

9 "39-71-1003. Eligibility for vocational rehabilitation
10 expenses benefits--under--chapter--not--affected-----other
11 expenses--payable. The-eligibility-of-any-injured-worker-to
12 receive-other-benefits-under-the-Workers'-Compensation--Act
13 is--in--no--way--affected--by--his-entrance-upon-a-course-of
14 vocational--rehabilitation--as--herein--provided;--A--person
15 undergoing--vocational-rehabilitation-must-be-paid-temporary
16 total-disability-benefits;--In-addition-thereto;--he--may--be
17 paid;--upon-the-certification-of-the-department-of-social-and
18 rehabilitation-services-from-funds-herein-provided;

19 (1)--his--actual-and-necessary-travel-expenses-from-his
20 place-of-residence-to-the-place-of-training-and-return;

21 (2)--his-living-expenses-while-in-training-in-an-amount
22 not-in-excess-of-\$50-per-week;--and

23 (3)--his-expenses-for--tuition;--books;--and--necessary
24 equipment-in-training;

25 Upon certification by the department of social and

1 rehabilitation services, a disabled worker may be paid
2 vocational rehabilitation expenses from funds provided in
3 39-71-1004, in addition to benefits payable under the
4 Workers' Compensation Act."

5 NEW SECTION. Section 51. Rehabilitation goals and
6 options. (1) The goal of rehabilitation services is to
7 return a disabled worker to work, with a minimum of
8 retraining, as soon as possible after an injury occurs.

9 (2) The first appropriate option among the following
10 must be chosen for the worker:

11 (a) return to the same position;

12 (b) return to a modified position;

13 (c) return to a related occupation suited to the
14 claimant's education and marketable skills;

15 (d) on-the-job training;

16 (e) short-term retraining program (less than 24
17 months);

18 (f) long-term retraining program (48 months maximum);

19 or

20 (g) self-employment.

21 (3) Whenever possible, employment in a worker's local
22 job pool must be considered and selected prior to
23 consideration of employment in a worker's statewide job
24 pool.

25 NEW SECTION. Section 52. Rehabilitation services --

1 required and provided by insurers and the department of
2 social and rehabilitation services. (1) Rehabilitation
3 services are required for disabled workers and may be
4 initiated by:

5 (a) an insurer by designating a rehabilitation
6 provider and notifying the division;

7 (b) the division by requiring the insurer to designate
8 a rehabilitation provider; or

9 (c) a disabled worker through a request to the
10 division. The division shall then require the insurer to
11 designate a rehabilitation provider.

12 (2) Rehabilitation services provided under this part
13 must be delivered:

14 (a) through a rehabilitation counselor certified by
15 the board of rehabilitation certification;

16 (b) by a vocational rehabilitation counselor employed
17 by the department of social and rehabilitation services; or

18 (c) by both.

19 (3) A disabled worker served by the department of
20 social and rehabilitation services may receive only those
21 vocational rehabilitation services as provided in Title 53,
22 chapter 7, parts 1 and 2.

23 NEW SECTION. Section 53. Designated rehabilitation
24 provider -- evaluation and report. (1) If a disabled worker
25 is capable of returning to work, the designated

1 rehabilitation provider shall evaluate and determine the
2 return-to-work capabilities of the disabled worker pursuant
3 to [section 51(2)(a) through 51(2)(d)].

4 (2) If an insurer's designated rehabilitation provider
5 has determined that all appropriate services have been
6 provided to the disabled worker under [section 51(2)(a)
7 through 51(2)(d)] and the worker has returned to work, the
8 insurer shall document that determination to the division.

9 (3) If the worker has not returned to work as provided
10 in subsection (2), the insurer shall notify the division.
11 The division shall then designate a rehabilitation panel as
12 provided in [section 54] and refer the worker to the panel.

13 NEW SECTION. Section 54. Rehabilitation panels. (1)
14 The division shall designate and administer rehabilitation
15 panels. The purpose of a panel is to advise the division on
16 a worker's eligibility for rehabilitation services. Each
17 panel shall issue to the division a report as provided in
18 [section 55].

19 (2) Each panel must be composed of at least:

20 (a) the insurer's designated rehabilitation provider;

21 (b) a representative from the department who has
22 expertise in job service listings, occupational supply and
23 demand in Montana, and other Montana career information; and

24 (c) a representative from the division, who shall
25 chair the panel.

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(3) (a) The insurer shall pay the cost of the designated rehabilitation provider.

(b) The division shall pay the cost of the department's representative and of the division's representative.

(4) The insurer shall provide the panel with the worker's medical records, rehabilitation reports, and other pertinent information in its possession.

(5) The panel may consult with the worker, insurer, medical and rehabilitation providers, and any other person and may have access to any information it considers pertinent to carry out its responsibility.

(6) Information received by the panel is confidential, except that it may be disclosed to the worker, insurer, and division.

NEW SECTION. Section 55. Rehabilitation panel report.

(1) The rehabilitation panel shall:

(a) review all records, statements, and other pertinent information; and

(b) prepare a report to the division, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in [section 51]; and

(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated earnings from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated earnings, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated earnings; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the worker's anticipated earnings.

(4) An insurer or a worker on his own motion may submit information to the panel prior to the time the panel issues its final report.

NEW SECTION. Section 56. Division's order of determination -- exception -- hearing. (1) The division shall issue an initial order of determination within 10 working days of receipt of a report from a rehabilitation panel. If the initial order of determination differs from

the findings and recommendations of the panel, the order must state the reasons for the difference.

(2) Within 10 working days from the date the initial order of determination is mailed, a party may submit a written exception to the order. On its own motion or at the request of any party, the division may conduct a hearing. The division shall issue a final order of determination within 20 working days of receipt of a written exception.

(3) If no party submits an exception within 10 working days, the initial order of determination becomes the final order of determination and must be issued by the division.

(4) Within 10 working days after the date of mailing of the division's final order of determination, an appeal may be taken to the board under the procedures and standards set forth in [section 7].

NEW SECTION. Section 57. Referral to department of social and rehabilitation services for retraining -- benefits -- appeals.

(1) If in its final order of determination the division considers a worker able to return to work in the worker's job pool, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the division finds the worker needs retraining, the division shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under [section 51(2)(d) through 51(2)(f)] and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

(3) If the department of social and rehabilitation services determines that a disabled worker has a vocational handicap, the worker is eligible for funds under 39-71-1003 up to the maximum duration established in the division's final order of determination.

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the division the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in [section 64].

(5) The department of social and rehabilitation services, in providing rehabilitation services to a worker referred to it by the division, shall consider but is not

17

1 bound by the rehabilitation panel report.

2 (6) If the department of social and rehabilitation
3 services has determined that all appropriate rehabilitation
4 services have been provided to a disabled worker, the
5 department shall document that determination to the
6 division.

7 (7) The appeal process before the board of social and
8 rehabilitation services provided for in 53-7-106 is the
9 exclusive remedy for a person aggrieved in the receipt of
10 services provided by the department of social and
11 rehabilitation services.

12 NEW SECTION. Section 58. Agreement between worker and
13 insurer regarding option. A worker and an insurer may agree
14 that an option in [section 51] is appropriate without
15 following the procedures provided in this part. Failure to
16 reach agreement is not a dispute under [section 23].

17 NEW SECTION. Section 59. Total rehabilitation
18 benefits during period of rehabilitation services --
19 limitation -- termination. (1) A worker who no longer is
20 temporarily totally disabled but meets the definition of a
21 disabled worker may be eligible for total rehabilitation
22 benefits.

23 (2) Eligibility for total rehabilitation benefits
24 begins on the date of maximum healing or the date notice is
25 given to the division by the insurer that a rehabilitation

1 provider has been designated, whichever is later.

2 (3) Benefits must be paid at the disabled worker's
3 temporary total disability rate for a period not exceeding
4 26 weeks from the date of eligibility, except that the
5 division may extend the period for good cause. The insurer
6 may extend the benefits without division approval but must
7 notify the division of the extension.

8 (4) Total rehabilitation benefits under this section
9 terminate when:

10 (a) a worker returns to work;

11 (b) a worker is qualified to return to work under the
12 priorities in [section 51] pursuant to a division order; or

13 (c) an I.W.R.P. is submitted to the division by the
14 department of social and rehabilitation services.

15 (5) The insurer shall provide written notice to the
16 worker and division that benefits have been terminated.

17 NEW SECTION. Section 60. Wage supplement and partial
18 rehabilitation benefits. (1) A worker who is in a
19 rehabilitation program under [section 57] in accordance with
20 and for the maximum duration established by a final order of
21 determination by the division is eligible to receive the
22 following benefits:

23 (a) wage supplement benefits as provided in 39-71-703
24 but with the rate based on 66 2/3% of the worker's actual
25 wages received at the time of injury, subject to a maximum

of one-half the state's average weekly wage; and

(b) a partial rehabilitation benefit that, together with the wage supplement provided in subsection (1)(a), provides the worker with weekly benefits equal to the worker's temporary total disability rate.

(2) After the worker completes the rehabilitation program, the worker's further eligibility, if any, for wage supplement benefits under 39-71-703 is reduced by the number of weeks of wage supplement benefits received under subsection (1)(a).

(3) Notwithstanding subsection (1)(a), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefit under that subsection may not exceed \$149.50, which is one-half the state's weekly wage established July 1, 1986.

NEW SECTION. Section 61. Auxiliary rehabilitation benefits. In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a \$4,000 total may be paid by the insurer for:

(1) reasonable travel and relocation expenses used to:

(a) search for new employment;

(b) return to work but in a new location; and

(c) implement a rehabilitation program pursuant to a final order of determination by the division; and

(2) reasonable participation with an employer in an

on-the-job training program.

NEW SECTION. Section 62. Self-employment -- criteria.

(1) A worker who is eligible for permanent total disability benefits may be eligible for a self-employment venture. A lump sum of \$20,000 or less of permanent total disability benefits may be awarded under 39-71-741 to assist the worker in the self-employment venture. Any previous lump-sum payment made under 39-71-741 must be considered so that the total amount of lump-sum payments of permanent total disability benefits does not exceed \$20,000.

(2) In addition to meeting the requirements set forth in 39-71-741, the self-employment venture must be considered feasible under criteria set forth by the division.

(3) When the worker begins the self-employment venture, his eligibility for permanent total disability benefits ends and the worker may be eligible for permanent partial disability benefits under 39-71-703.

(4) If a worker again becomes eligible for permanent total disability benefits, the insurer may recoup any lump sum of permanent total disability benefits awarded for a self-employment venture, as provided in 39-71-741.

NEW SECTION. Section 63. Exchange of information. The department of social and rehabilitation services, the insurer's designated rehabilitation provider, and the division shall provide to one another case information as

necessary to carry out the purposes of this part.

NEW SECTION. Section 64. Termination of benefits for noncooperation with rehabilitation services -- division hearing and appeal. (1) If an insurer believes a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' notice to the worker and division on a form approved by the division, may terminate any rehabilitation benefits the worker is receiving under this part until the worker cooperates. If the worker is receiving wage supplement benefits, those benefits must continue until the division's determination under subsection (3) is made.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the division within 10 working days after the date of the 14-day notice. The worker or insurer may request a hearing or the division may hold a hearing on its own motion. The division shall issue an order within 30 days of receipt of the written exception.

(3) If no exceptions are timely filed or the division determines the worker unreasonably refused to cooperate, the insurer may terminate wage loss supplement benefits the worker is receiving until the worker cooperates with the rehabilitation provider. If the worker prevails at a hearing before the division, it may award attorney fees and costs to

the worker under 39-71-612.

(4) Within 10 working days after the division mails its order to the party's last-known address, a party may appeal to the board under the procedures and standards set forth in [section 7].

NEW SECTION. Section 65. Division jurisdiction over disputes under this part -- appeals. In addition to pursuing the hearing opportunities provided in [sections 56 and 64], a party may bring a dispute arising under the provisions of this part, except for a dispute over which the department of social and rehabilitation services has jurisdiction under [section 57], before the division under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, and any rules promulgated by the division. Within 10 days after mailing of the division's final order, an interested party may appeal to the board under the procedures and standards set forth in [section 7].

Section 66. Section 39-71-2106, MCA, is amended to read:

"39-71-2106. Requiring security of employer. (1) The division may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit. Such security deposit may be a surety bond, government bond, or letter of credit approved by the division and must be the greater of:

(a) \$250,000; or

(b) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(2) If the division finds that an employer has lost his solvency or financial ability to pay the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1, the division must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security for the payment of compensation, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(3) The security must be deposited with the division and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the division in the amount

to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(4) The division is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof."

Section 67. Section 39-71-2902, MCA, is amended to read:

"39-71-2902. Operating expenses. ~~The~~ ~~workers'~~ ~~compensation~~ ~~judge~~ ~~may~~ ~~employ~~ ~~such~~ ~~employees~~ ~~as~~ ~~may~~ ~~be~~ ~~required~~ ~~to~~ ~~carry~~ ~~out~~ ~~the~~ ~~duties~~ ~~under~~ ~~this~~ ~~part~~. All expenditures of the workers' compensation judge, including

1 but not limited to ~~salaries~~ salary, traveling expenses,
2 office rent, office equipment, and supplies, shall be paid
3 out of the workers' compensation administration fund."

4 Section 68. Section 39-71-2905, MCA, is amended to
5 read:

6 "39-71-2905. Petition---to Decisions of workers'
7 compensation judge. A-claimant--or--an--insurer--who--has--a
8 dispute--concerning--any--benefits--under chapter 71 of this
9 title may petition the workers' compensation judge for a
10 determination of the dispute. The judge, after a hearing
11 conducted prior to July 1, 1987, shall make a determination
12 of the dispute in accordance with the law as set forth in
13 chapter 71 of this title. If the dispute relates to benefits
14 due a claimant under chapter 71, the judge shall fix and
15 determine any benefits to be paid and specify the manner of
16 payment. The workers' compensation judge has exclusive
17 jurisdiction to make determinations concerning disputes
18 under chapter 71, except as provided in 39-71-516 and
19 [section 3]. The penalties and assessments allowed against
20 an insurer under chapter 71 are the exclusive penalties and
21 assessments that can be assessed against an insurer for
22 disputes arising under chapter 71."

23 Section 69. Section 39-72-102, MCA, is amended to
24 read:

25 "39-72-102. Definitions. As used in this chapter,

1 unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Beneficiary" is as defined in 39-71-116(2).

4 (2) "Board" means the board of industrial insurance
5 provided for in [section 2].

6 {2}{3} "Child" is as defined in 39-71-116{4}.

7 {3}{4} "Disablement" means the event of becoming
8 physically incapacitated by reason of an occupational
9 disease from performing work in the normal labor market
10 worker's job pool. Silicosis, when complicated by active
11 pulmonary tuberculosis, is presumed to be total disablement.
12 "Disability", "total disability", and "totally disabled" are
13 synonymous with "disablement", but they have no reference to
14 "partial permanent partial disability".

15 {4}{5} "Division" is as defined in 39-71-116{5}.

16 {5}{6} "Employee" is as defined in 39-71-118.

17 {6}{7} "Employer" is as defined in 39-71-117.

18 {7}--"Husband"--is-as-defined-in-39-71-116{7}:

19 (8) "Independent contractor" is as defined in
20 39-71-120.

21 (9) "Insurer" is as defined in 39-71-116{8}.

22 (10) "Invalid" is as defined in 39-71-116{9}.

23 (11) "Occupational disease" means all diseases arising
24 out of or contracted from and in the course of employment.

25 (12) "Order" is as defined in 39-71-116{10}.

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO₂) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20) [section 19].

~~(16) "Wife" is as defined in 39-71-116(21).~~

~~(17) (16) "Year" is as defined in 39-71-116(6)(9) and 39-71-116(22)(23).~~

Section 70. Section 39-72-610, MCA, is amended to read:

"39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before the division or the ~~workers'--compensation-judge board~~, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional

medical information in order to rebut the medical examination report of a panel member or a panel report."

Section 71. Section 39-72-612, MCA, is amended to read:

"39-72-612. Rehearing and appeal to ~~workers'~~ compensation--judge board. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the ~~workers'~~ compensation--judge board, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the ~~workers'~~ compensation-judge board within 30 days after the division has issued its final determination. ~~The--judge--after-a-hearing-held-pursuant-to 39-71-2903-and-39-71-2904--shall-make-a-final--determination concerning--the-claimant's-claim--The-judge-may-overrule-the division-only-on-the-basis-that-the-division's-determination is:~~

~~(a)--in--violation--of--constitutional---or---statutory~~

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provisions;

(b)--in-excess-of--the--statutory--authority--of--the
agency;

(c)--made-upon-unlawful-procedure;

(d)--affected-by-other-error-of-law;

(e)--clearly--erroneous--in--view--of--the--reliable,
probative--and-substantial-evidence-on-the-whole-record--or

(f)--arbitrary-or-capricious-or-characterized-by--abuse
of--discretion--or--clearly--unwarranted--exercise--of
discretion."

Section 72. Section 39-72-613, MCA, is amended to
read:

"39-72-613. Costs and attorney fees. (1) If an insurer
requests that a hearing be held before the division and the
claim is determined compensable by the division after the
hearing and the insurer does not appeal the division's
decision to the workers'-compensation-judge board,
reasonable costs and attorney fees, as determined by the
division, shall must be paid to the claimant's attorney by
the insurer.

(2) If an insurer appeals a decision of the division
to the workers'-compensation-judge-or-from-the-judge-to--the
supreme-court board and the claim is determined compensable,
reasonable costs and attorney fees, as determined thereafter
by the workers'-compensation-judge board or court, shall

must be paid to the claimant's attorney by the insurer for
proceedings before the division, the workers'-compensation
judge-and-the-supreme-court board, or court."

Section 73. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of
theft when he purposely or knowingly obtains or exerts
unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the
property;

(b) purposely or knowingly uses, conceals, or abandons
the property in such manner as to deprive the owner of the
property; or

(c) uses, conceals, or abandons the property knowing
such use, concealment, or abandonment probably will deprive
the owner of the property.

(2) A person commits the offense of theft when he
purposely or knowingly obtains by threat or deception
control over property of the owner and:

(a) has the purpose of depriving the owner of the
property;

(b) purposely or knowingly uses, conceals, or abandons
the property in such manner as to deprive the owner of the
property; or

(c) uses, conceals, or abandons the property knowing
such use, concealment, or abandonment probably will deprive

1 the owner of the property.

2 (3) A person commits the offense of theft when he
3 purposely or knowingly obtains control over stolen property
4 knowing the property to have been stolen by another and:

5 (a) has the purpose of depriving the owner of the
6 property;

7 (b) purposely or knowingly uses, conceals, or abandons
8 the property in such manner as to deprive the owner of the
9 property; or

10 (c) uses, conceals, or abandons the property knowing
11 such use, concealment, or abandonment probably will deprive
12 the owner of the property.

13 (4) A person commits the offense of theft when he
14 purposely or knowingly obtains or exerts unauthorized
15 control over any part of any public assistance provided
16 under Title 53 by a state or county agency, regardless of
17 the original source of assistance, by means of:

18 (a) a knowingly false statement, representation, or
19 impersonation; or

20 (b) a fraudulent scheme or device.

21 (5) A person commits the offense of theft when he
22 purposely or knowingly obtains or exerts unauthorized
23 control over any part of any benefits provided under Title
24 39, chapters 71 and 72, by means of:

25 (a) a knowingly false statement, representation, or

1 impersonation; or

2 (b) deception or other fraudulent action.

3 ~~†5†~~(6) A person convicted of the offense of theft of
4 property not exceeding \$300 in value shall be fined not to
5 exceed \$500 or be imprisoned in the county jail for any term
6 not to exceed 6 months, or both. A person convicted of the
7 offense of theft of property exceeding \$300 in value or
8 theft of any commonly domesticated hoofed animal shall be
9 fined not to exceed \$50,000 or be imprisoned in the state
10 prison for any term not to exceed 10 years, or both.

11 ~~†6†~~(7) Amounts involved in thefts committed pursuant
12 to a common scheme or the same transaction, whether from the
13 same person or several persons, may be aggregated in
14 determining the value of the property."

15 Section 74. Section 2-15-1014, MCA, is amended to
16 read:

17 "2-15-1014. Office of workers' compensation judge --
18 allocation -- appointment -- salary. (1) There is the office
19 of workers' compensation judge. The office is allocated to
20 the department of administration for administrative purposes
21 only as prescribed in 2-15-121 except as provided in
22 [section 3]."

23 (2) The On July 1, 1987, the governor shall appoint
24 the workers' compensation judge for a term of 6 years not to
25 exceed 6 months in the same manner provided by Title 3,

chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy ~~shall~~ may be filled in the same manner as the original appointment, but in any case the term may not extend beyond December 31, 1987.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but shall be accorded retirement benefits under the public employees' retirement system."

Section 75. Section 19-12-401, MCA, is amended to read:

"19-12-401. Eligibility for pension benefits. In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter must meet each of the following requirements:

(1) (a) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a

qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. In that event, he is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. No fractional part of any year may count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter must serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), he must have attained the age of 55, but he need not be an

1 active volunteer firefighter or an active member of any
2 volunteer fire company when he reaches that age.

3 (b) An active member of a volunteer fire company whose
4 duty-related injury results in a permanent, total disability
5 as defined in 39-71-116~~(13)~~ is eligible to receive a partial
6 pension regardless of his age calculated as follows:

7 (i) for a member with less than 10 years of service, a
8 pension calculated as provided in subsection (1)(b) in which
9 the numerator equals 10; or

10 (ii) for a member with 10 years or more of service, a
11 pension calculated as provided in subsection (1)(b).

12 (3) During each of the years for which he claims
13 credit under subsection (1), he must have completed a
14 minimum of 30 hours of instruction in matters pertaining to
15 firefighting under a program formulated and supervised by
16 the chief or foreman of his volunteer fire company.

17 (4) Effective July 1, 1965, no volunteer firefighter
18 may receive credit for any year of membership in a volunteer
19 fire company unless, throughout the year:

20 (a) the company maintained firefighting equipment in
21 serviceable condition of a value of \$2,500 or more; and

22 (b) the company or the fire district served by it was
23 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire
24 underwriters for the purpose of fire insurance premium
25 rates.

1 (5) He must have ceased to be an active member of any
2 volunteer fire company, and if he applies for and receives
3 pension benefits hereunder, he will not thereafter be
4 eligible to become an active member of any volunteer fire
5 company."

6 Section 76. Section 39-71-118, MCA, is amended to
7 read:

8 "39-71-118. Employee, worker, and workman defined. (1)
9 The terms "employee", "workman", or "worker" mean:

10 (a) each person in this state, including a contractor
11 other than an independent contractor, who is in the service
12 of an employer, as defined by 39-71-117, under any
13 appointment or contract of hire, expressed or implied, oral
14 or written. The terms include aliens and minors, whether
15 lawfully or unlawfully employed, and all of the elected and
16 appointed paid public officers and officers and members of
17 boards of directors of quasi-public or private corporations
18 while rendering actual service for such corporations for
19 pay. Casual employees as defined by 39-71-116~~(13)~~ are
20 included as employees if they are not otherwise covered by
21 workers' compensation and if an employer has elected to be
22 bound by the provisions of the compensation law for these
23 casual employments, as provided in 39-71-401(2). Household
24 or domestic service is excluded.

25 (b) a recipient of general relief who is performing

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1 work for a county of this state under the provisions of
2 53-3-303 through 53-3-305 and any juvenile performing work
3 under authorization of a district court judge in a
4 delinquency prevention or rehabilitation program;

5 (c) a person receiving on-the-job vocational
6 rehabilitation training or other on-the-job training under a
7 state or federal vocational training program, whether or not
8 under an appointment or contract of hire with an employer as
9 defined in this chapter and whether or not receiving payment
10 from a third party. However, this subsection does not apply
11 to students enrolled in vocational training programs as
12 outlined above while they are on the premises of a public
13 school or community college.

14 (d) students enrolled and in attendance in programs of
15 vocational-technical education approved by the state board
16 of public education at designated postsecondary
17 vocational-technical centers; or

18 (e) an airman or other person employed as a volunteer
19 under 67-2-105.

20 (2) If the employer is a partnership or sole
21 proprietorship, such employer may elect to include as an
22 employee within the provisions of this chapter any member of
23 such partnership or the owner of the sole proprietorship
24 devoting full time to the partnership or proprietorship
25 business. In the event of such election, the employer must

1 serve upon the employer's insurer written notice naming the
2 partners or sole proprietor to be covered, and no partner or
3 sole proprietor shall be deemed an employee within this
4 chapter until such notice has been given. For premium
5 ratemaking and for the determination of weekly wage for
6 weekly compensation benefits, the insurance carrier shall
7 assume a salary or wage of such electing employee to be not
8 less than \$900 a month and not more than 1 1/2 times the
9 average weekly wage as defined in this chapter."

10 Section 77. Section 50-16-311, MCA, is amended to
11 read:

12 "50-16-311. When consent is required to release or
13 transfer confidential health care information. (1) Except as
14 provided in subsection (2) or as otherwise specifically
15 provided by law or the Montana Rules of Civil Procedure,
16 confidential health care information relating to a person
17 may not be released or transferred without the written
18 consent of the person or his authorized representative.

19 (2) Consent is not required for release or transfer of
20 confidential health care information:

21 (a) to a physician, dentist, or other medical person
22 for diagnosis or treatment of an individual in a medical or
23 dental emergency;

24 (b) to a peer review committee if the information
25 concerns matters within the scope of the licensed

1 professional practice of the committee members;

2 (c) to qualified persons for the purpose of conducting
3 scientific research, management audits, financial audits,
4 program evaluations, or similar studies. However, qualified
5 persons may not directly or indirectly identify an
6 individual patient in a research report, audit, or
7 evaluation or disclose a patient's identity in any manner.

8 (d) to a health care provider:

9 (i) as may be reasonably necessary to provide health
10 care services to the individual about whom the information
11 relates; or

12 (ii) in the administration of the office, practice, or
13 operation in connection with the providing of health care
14 services to the individual about whom the information
15 relates;

16 (e) to an employer as may be reasonably necessary in
17 the administration of a group insurance plan or to a
18 workers' compensation insurer, the division of workers'
19 compensation, ~~or--the--workers--compensation---~~ judge the
20 department of labor and industry, or the board of industrial
21 insurance, as is necessary in the administration of Title
22 39, chapters 71 and 72;

23 (f) when a person's insurance coverage obligates more
24 than one insurer with respect to a claim or benefit;

25 (g) to a state insurance department for the purpose of

1 reviewing an insurance claim or complaint made to such
2 department by an insured or his authorized representative or
3 by a beneficiary or his authorized representative of a
4 deceased insured;

5 (h) to a law enforcement officer about the general
6 physical condition of a person being treated in a health
7 care facility if such person was injured on a public roadway
8 or was injured by the possible criminal act of another;

9 (i) to the news media about the general physical
10 condition of an injured person being treated in a health
11 care facility, provided the existence of the hospitalization
12 is publicly known.

13 (3) For the purpose of this section, the term "general
14 physical condition" is limited to a description of the
15 condition as "satisfactory", "serious", or "critical".

16 Section 78. Section 53-9-106, MCA, is amended to read:

17 "53-9-106. Attorneys' fees. (1) The division may grant
18 attorneys' fees to attorneys for representing claimants
19 before the division. Any attorney's fee granted by the
20 division shall be in addition to compensation awarded the
21 claimant under this part.

22 (2) The division may regulate the amount of the
23 attorney's fee in any claim under this part when an attorney
24 is representing a claimant.

25 (3) In cases under this part that go before the

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workers' compensation judge a district court, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the judge.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney."

Section 79. Section 53-9-131, MCA, is amended to read:

"53-9-131. Appeals. (1) After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the workers' compensation judge district court for review. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming or modifying the division's determination.

(2) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(3) Notwithstanding Title 27, chapter 4, part 7, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the

~~district court in civil cases.~~"

NEW SECTION. Section 80. Repealer. (1) Sections 2-15-1014, 2-15-1704, 39-51-310, and 39-71-2901 through 39-71-2907, MCA, are repealed.

(2) Sections 39-51-305, 39-51-2403, 39-51-2404, 39-51-2409, 39-51-2410, 39-71-104, 39-71-121, 39-71-122, 39-71-410, 39-71-705 through 39-71-707, 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2908, 39-71-2909, and 39-72-104, MCA, are repealed.

NEW SECTION. Section 81. Extension of authority. Any existing authority of the department of labor and industry and the division of workers' compensation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 82. Codification instructions. (1) Sections 1 and 19 are intended to be codified as an integral part of Title 39, chapter 71, part 1, and the provisions of Title 39, chapter 71, part 1, apply to sections 1 and 19.

(2) Section 2 is intended to be codified as an integral part of Title 2, chapter 15, part 17, and the provisions of Title 2, chapter 15, part 17, apply to section 2.

(3) Sections 4 through 10 are intended to be codified as an integral part of Title 39, chapter 1, and the

1 provisions of Title 39, chapter 1, apply to sections 4
2 through 10.

3 (4) Sections 22, 23, and 35 are intended to be
4 codified as an integral part of Title 39, chapter 71, part
5 3, and the provisions of Title 39, chapter 71, part 3, apply
6 to sections 22, 23, and 35.

7 (5) Section 24 is intended to be codified as an
8 integral part of Title 39, chapter 71, part 4, and the
9 provisions of Title 39, chapter 71, part 4, apply to section
10 24.

11 (6) Sections 39 and 43 are intended to be codified as
12 an integral part of Title 39, chapter 71, part 7, and the
13 provisions of Title 39, chapter 71, part 7, apply to
14 sections 39 and 43.

15 (7) Sections 49 and 51 through 65 are intended to be
16 codified as an integral part of Title 39, chapter 71, part
17 10, and the provisions of Title 39, chapter 71, part 10,
18 apply to sections 49 and 51 through 65.

19 NEW SECTION. Section 83. Severability. If a part of
20 this act is invalid, all valid parts that are severable from
21 the invalid part remain in effect. If a part of this act is
22 invalid in one or more of its applications, the part remains
23 in effect in all valid applications that are severable from
24 the invalid applications.

25 NEW SECTION. Section 84. Applicability. (1) The

1 portions of this act moving jurisdiction over disputes
2 arising under Title 39, chapters 71 and 72, from the
3 workers' compensation court to the department of labor and
4 industry and board of industrial insurance apply to all
5 injuries and diseases, regardless of the date of occurrence.

6 (2) Sections 56, 64, and 65, giving the division of
7 workers' compensation jurisdiction over disputes arising
8 under Title 39, chapters 71 and 72, concerning
9 rehabilitation apply only to injuries and diseases occurring
10 after June 30, 1987. Disputes over rehabilitation for
11 injuries and diseases occurring prior to July 1, 1987, may
12 be brought before the department of labor and industry and
13 board of industrial insurance as provided in this act.

14 (3) The portions of this act providing procedures for
15 resolution of disputes arising under Title 39, chapter 51,
16 apply to all disputes, regardless of the date of occurrence
17 of the underlying events.

18 (4) The remaining portions of this act apply only to
19 injuries, diseases, and events occurring after June 30,
20 1987.

21 NEW SECTION. Section 85. Effective dates. (1) Except
22 as provided in subsections (2) and (3), this act is
23 effective July 1, 1987.

24 (2) Sections 2, 3, 4(3), 20, 82, and this section are
25 effective on passage and approval.

LC 1200/01

1 (3) Section 80(1) is effective January 1, 1988.

-End-

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 14, 1987

The eleventh meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 14, 1987, at 1:00 p.m. in Room 325 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 315: Senator Bob Williams, Senate District 15, sponsor of the bill, gave the opening statement and reserved the right to close. A copy of his testimony is attached as Exhibit 1.

PROPOSERS: Mr. Gene Huntington, representing Governor Schwinden, rose in support of Senate Bill 315, and stated two years ago Governor Schwinden appointed a Governor's Workers' Compensation Advisory Council to study the total Workers' Compensation Act and propose recommendations for reform. The Council worked hard for the past two years to develop recommendations. Mr. Huntington believes Senate Bill 315 contains the recommendations of the Council. Any solution to the Workers' Compensation problems must reduce costs so future costs will not exceed the income and so that the Workers' Compensation program will not continue to be run in a deficit. This must be done by avoiding major rate increases and preserve the basic benefits of wage replacement, medical benefits for injured workers, and reduce litigation for some predictability and stability to the Workers' Compensation system. The Governor's bill will attempt to limit litigation by clearly defining benefits in the process for obtaining them so negotiation and litigation are minimized. The Governor's bill also proposes to replace the Workers' Compensation Court with the Board of Industrial Insurance, which is a process for settling disputes without going directly to court. The flood of litigation in recent years resulted in attorneys seeking new interpretations of the Workers' Compensation laws. Those different and changing interpretations of the law have increased the cost of the benefits, but have lead to a system that has very little predictability and stability in terms of its

financial condition. The Board of Industrial Insurance is not a proposal to return to the system that existed in the early 1970's which led to the creation of the Workers' Compensation Court. It is a Board that is independent, as the judge is independent in the current Workers' Compensation Court. Mr. Huntington feels the creators of the Workers' Compensation Court never envisioned the current level of litigation. In reviewing the Legislative Interim Study that led to the recommendation to create the court, it was clear they looked at the alternatives of a review board, an appeals board, and an administrative judge. In the end they selected a judge. The report said the reason for selecting a judge and the direct appeals Supreme Court is that since the judge will be an expert in the field of Workers' Compensation, the committee members felt there would not be a great volume of cases appealed. In 1986 there were 40 cases appealed to the Supreme Court. Clearly the Court has not worked as it was intended. The proposal for a Board of Industrial Insurance is not an experiment, but a process that is used in most other states and by other agencies in state government. Mr. Huntington urged the committee and the legislature to take responsible action to reduce the cost of Workers' Compensation so major rate increases are not needed, and to reduce the level of litigation.

Mr. Bob Robinson, Administrator, Workers' Compensation Division, gave written testimony in support of Senate Bill 315. His testimony is attached as Exhibit 2.

Mr. Laury Lewis, former Administrator of the Workers' Compensation Division, currently Administrator of the Nevada State Industrial Insurance System, stated he is not speaking as a proponent or an opponent. Mr. Lewis stated he is going to make comparisons of the Montana Workers' Compensation System to the Nevada State Insurance. He said there are reasons the Nevada system does work, and because it works there has been only one overall rate increase since 1978. The reason it works is because of the laws of the state. Mr. Lewis feels the State Fund should remain. He explained he is appointed by a 7 member board of directors, 3 of which represent organized labor and 3 of which represent policy holders and 1 represents the general public. Montana is facing a serious problem and it needs to be corrected. Mr. Lewis feels both SB 315 and SB 330 are getting at the issues. Mr. Lewis feels SB 315 has better language, but there are still administrative problems in both bills. Nevada's system works because it has quick, good and fair benefits to the workers. Their temporary total rates are good, they

LABOR AND EMPLOYMENT

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pay for impairments, and they have a good rehabilitation program. Mr. Lewis stated SB 315 and SB 330 are both trying to address this. Mr. Lewis stated anytime there is a system where the benefits are not clear, there will be litigation. When there is language in the law concerning reaching impairment awards based upon factors relevant to a worker's gainful employment, potential loss of future earning capacity, or their education or age to determine their benefits, there will be litigation. This is not the fault of labor, attorneys, or management. If that language is in the law, there will be litigation. Large lump sum settlements create problems; they bring litigation and this should be addressed. Mr. Lewis feels the issues of both bills are issues that need to be addressed to save the State Fund.

Mr. Jim ^{Cannon} Cannon, Chairman of the Governor's Advisory Council on Workers' Compensation, stated there was much time spent trying to find a solution to the Workers' Compensation problem. He distributed a copy of the Workers' Compensation Reform Legislation, which is attached as Exhibit 3. He regrets the fact there are two bills because it was the hope of the Council to have one bill. The Council was operating on the basis of actuarial information which proved to be very far under the actual facts. The Council asked the Governor to make a special actuarial audit in order to receive the best information possible. The Council acted primarily on the basis of that information received in April, and in November more information was brought forth that the fund was more than \$81 million unfunded liability. A great deal of the Council's recommendations were adopted and made a part of the Governor's bill. Mr. Cannon suggested more emphasis should be put on the similarity of the two bills rather than the differences. Mr. Cannon summarized the differences of the two bills. He feels if litigation can be reduced as proposed in both bills, where the litigation takes place would be less important. The Council did not get into the question of management, but it is of major importance and should not be overlooked.

Mr. Mike McCarter, a Helena attorney, stated a part of his practice is in Workers' Compensation defense as he represents the State Fund. Mr. McCarter stated the Liberal Construction Clause has had a broadening coverage and benefits through judicial interpretation of the current Workers' Compensation Act. This has occurred because the language in the Act is vague and nonspecific and the Liberal Construction Clause is an invitation to the court to construe the act, to fill in where it is vague. Mr. McCarter does not

believe litigation can be eliminated, but it can be diminished by enacting a more specific Workers' Compensation Law which would eliminate ambiguity and uncertainty and send a message the legislature wants the Act interpreted as it is written, and not favoring any particular party. Section 18 is a new definition of what constitutes an injury or accident under the Workers' Compensation Act. This excludes compensation for mental or emotional stress, and excludes compensation for ulcers resulting from job anxieties. Micro-trauma would also be eliminated. Under subsection 2A, an unexpected traumatic incident would eliminate compensation for unexpected results. Section 5 deals with cardiovascular strokes and heart attacks, and compensation will be awarded if the job was the primary factor of the condition.

Mr. Dan Hoven, a Helena attorney who has represented the State Fund, stated that presently permanent partial disability benefits can be obtained by an injured worker by earning capacity and by indemnities. Section 38 of SB 315 embraces the concept of actual diminution in earning capacity and eliminates totally any indemnity award for an injured worker for permanent partial disability. Under Section 38, the injured worker would be entitled to 66 2/3% of the diminution of wage loss for a period of 500 weeks. However, there would be no benefits for an injured worker if he is making the same or more money after the injury or the recuperative period. Presently under the indemnity award theory which SB 315 eliminates, a claimant need not prove an actual loss of wages and he can be entitled to benefits if he demonstrates a perspective loss of earning capacity in the future. SB 315 is trying to eliminate the situations where an injured worker who has reached maximum healing may return to his same job and receive the same pay, or greater pay, or he may return to a different line of employment at the same pay and still be eligible for compensation benefits. SB 315 will pose the policy question to the committee whether the committee should have the Workers' Compensation Act provide benefits only for actual demonstrated wage loss, or whether the Workers' Compensation Act should also be extended as it presently does to take into account a much broader concept of disability which would include factors such as pain, and the impact of the injury on the worker to earn money in the future.

Ms. Maggie Bullock, Administrator of the vocational rehabilitation programs in the Department of Social and Rehabilitation Services, gave testimony in support of SB 315. A copy of her testimony is attached as Exhibit 4.

Mr. Bruce Vincent, representing Vincent Logging, Libby, Montana, turned in petitions for the record, which are attached as Exhibit 5. Mr. Vincent stated the Workers' Compensation Action Committee (WCAC) represents the group of people this bill will effect. They are the three current victims of the collapsing system; they are the injured worker, the non-injured worker, and the employer. The reason this group was formed is because of the high premium rates. Mr. Vincent has not seen a pay raise since 1973, and there seems to be no raise possibilities in sight. Six Hundred members of the WCAC attended a Governor's Advisory Council meeting held in Libby to express their views. WCAC members held a rally in Libby to get people involved, and after the rally a meeting was held to further discuss what was necessary for reform in the Workers' Compensation system. The Governor's bill answers every demand the WCAC expressed concern with, and they believe it is a workable bill. Mr. Vincent urged the committee to support this bill.

Mr. William T. Oftedal, representing E. H. Oftedal & Sons, Inc., gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 6.

Mr. Jim Smith, representing the Montana Association of Rehabilitation Facilities, stated they support SB 315 because the injured worker is critical to this process and it has a good rehabilitation process for the injured worker.

Mr. Bob Holding, Montana Motor Carriers Association, Inc., gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 7.

Mr. Stuart Doggett, representing the Montana Chamber of Commerce, stated they support SB 315.

Mr. Joe Rick, logging contractor from Superior, Montana, and President of the Montana Logging Association, urged support of SB 315.

Mr. Roger Young, representing the Great Falls Chamber of Commerce, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 8.

Mr. Dennis Terrio, representing Local Union 206, International Brotherhood of Electrical Workers, stated they support SB 315.

Mr. Lloyd Doney, representing ASARCO Troy Unit, gave testimony in support of this bill. A copy of his testimony is attached as Exhibit 9.

Mr. Steve Seifert, representing Columbia Falls Aluminum Company, stated they support SB 315.

Mr. Don DeJarnett, representing Montana Steel and Supply, Billings, Montana, and the Billings Chamber of Commerce, gave testimony in support of SB 315. A copy of his testimony is attached as Exhibit 10.

CONSIDERATION OF SENATE BILL NO. 330: Senator Fred Van Valkenburg, Senate District 30, sponsor of the bill, gave the opening statement and reserved the right to close. A copy of his statement is attached as Exhibit 11.

PROPONENTS: Mr. Wade J. Dahood, attorney from Anaconda who practices Workers' Compensation law, stated he had listened to the proponents of SB 315, but he heard very little concerning the protection of the injured worker. Mr. Dahood stated the reason for SB 315 was not discussed, but he feels the reason for SB 315 is because the deficit that occurred during this administration and because of the heavy litigation load. Mr. Dahood stated in many of the injured worker cases, it takes him 90 days to receive his first check and it takes far too long for the Workers' Compensation Division to settle claims. Mr. Dahood feels the answer to some of the problems would be to appoint someone who has real experience working with the insurance business. Mr. Dahood stated there is no reason the Workers' Compensation rates are so high. There are ways to balance a budget. He stated there are two experts on the Workers' Compensation system who will be testifying today, they are Mr. Norm Grosfield and Professor David J. Patterson. These two experts are joining the proponents of SB 330 to urge the committee to adopt legislation that will not lose sight of the fact our constitution, laws, and government are based on protecting the citizen.

Rep. Jerry Driscoll, House District 92, stated he was on the Governor's Workers' Compensation Advisory Council. They submitted a report to cut 18-22% of the cost from the Workers' Compensation system, however, the administration did not want to follow the recommendation of that report. Thus, they came up with their own bill, SB 315. Rep. Driscoll stated of all the money paid into the system, injured workers receive less than half. Most of the cuts and changes presented are taken from the injured worker.

Senate Bill 315 would raise administration costs higher. Between 1985 and 1986 the administration costs were raised \$1 million, medical benefits were raised \$6 million, and workers benefits were raised \$4 million. Senate Bill 330 would change permanent partial disabled from a maximum of 500 weeks to a maximum of 350 weeks. SB 315 would eliminate permanent partial benefits. SB 315 gives the permanently disabled worker a lump sum compromise, but it is really an interest-bearing loan. Rep. Driscoll urged the committee when considering the two different bills to read the Governor's charge to the Advisory Council and remember the injured worker. Costs must be reduced but the administrative costs do not need to be increased.

Mr. Howard Hultgren, a Billings chiropractor and member of the Governor's Advisory Council, stated the Advisory bill recommended the administration be divided. Currently the present administration has the responsibility of administering the Division and the State Fund, Plan 3. They recommended the administration be divided and Plan 3 be administered separately. Mr. Hultgren urged the committee to consider the division of administration and thus, improving the quality of the services rendered to the injured worker. He supports Senate Bill 330 because he feels it is more people conscious than Senate Bill 315. Mr. Hultgren feels there is a problem with the definition of injury, and this could lead to much litigation.

Mr. Norm Grosfield, prior Administrator for the Workers' Compensation Division and an attorney in private practice for Workers' Compensation issues since 1973, stated Advisory Councils have been used in Workers' Compensation since approximately 1969. He has worked with many of these councils and they have come to the legislative session with full support and submitted proposals to the legislature and the legislature adopted the proposals. He thought the council that was appointed to review the Workers' Compensation matters in 1985 was going to function the same way. Mr. Grosfield was concerned with the size of the council because with that amount of people it is hard to have unanimity. The Advisory Council gave 19 votes in support of the recommendations. Mr. Grosfield's areas of suggestion involved a reduction of benefits in the least important areas, which were death and permanent partial benefits, and the restricting application of the definition of injury in certain aggravation matters. He

feels the recommendations of the Advisory Council are good and avoid the complex government setup that is being proposed in SB 315. The Advisory Council bill, when compared to the complexity of the bureaucracy that will be established by the Governor's bill, will actually save greater funds, excluding the discussion of the definition of injury. Mr. Grosfield stated the Workers' Compensation system should not be made more complex than it already is, and the Governor's bill makes the system more complex. There are sufficient reductions in the benefit areas and in other areas to reduce the cost of Workers' Compensation in the Advisory Council's bill. Mr. Grosfield urged the support of the committee for SB 330.

Dave Patterson, Professor of Workers' Compensation Law at the University of Montana, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 12.

Mr. Brad Luck, a Missoula attorney who represents insurance companies and employers, and represents Workers' Compensation Plans 1, 2, and 3, and was also on the Governor's Advisory Council, said he is representing the Montana Association of Defense Councils. Mr. Luck agrees with certain statements made by people supporting SB 315. The employers of Montana cannot continue to pay for the Workers' Compensation system as it exists today. There is a need for immediate, swift and significant reform. Mr. Luck worked with the other members of the Governor's Advisory Council toward that end. He is concerned the thoughtful, significant and meaningful reform is in jeopardy. Mr. Luck stated if SB 315 passes it will be the biggest boom to attorney involvement in Workers' Compensation the state of Montana has ever seen. Mr. Luck said he supports the council bill, SB 330, because the council bill provides the framework for the meaningful, thoughtful reform in savings that everyone wants. Mr. Luck is convinced, after studying the ramification of both bills, the appropriate vehicle for reform is the council bill. He said there are three major differences of SB 315 and SB 330. They are, claims handling, permanent partial disability, and settlements and lump sums. Mr. Luck feels from an employer and insurer view, the council bill is the superior product. In relation to permanent partial disability, there seems to be a myth that the division bill will create a wage supplement system to save money and totally reform permanent partial disability benefits; however, this is not correct. One of the biggest differences between the

two bills is the abolition of the Workers' Compensation Court. The initiation of litigation in Workers' Compensation today has gotten out of hand. The Governor's answer is to get rid of the Workers' Comp. Court and replace it with a super bureaucracy. The council's bill suggests a refining of the system by limiting the attorney's fees that are available to a claimant to be paid by the employer and the insurer. Therefore, the incentive to go to court has been taken away. The council bill gives the court significant new power to handle its own proceedings, which it did not have before, and the power to sanction litigants for their attorneys for unnecessary and frivolous litigation. Also, the council bill presents a step by step process that must be gone through before anyone can even go to the Workers' Compensation Court, a process that will reduce litigation. Finally, the council bill, as does the division bill, indicates the act shall be construed according to its terms. Mr. Luck stated the combination of everything he mentioned will fine-tune and streamline the process. Mr. Luck stated there have been times when he has been frustrated with the Workers' Compensation Court; however, the problem is not the judge or the system, the problem is the framework of the act. If there is a problem, then make it less subjected to interpretation.

Mr. Ray Conger, representing the Montana Council on Compensation Insurance, stated if SB 315 is adopted in its present form, then \$1 million of employers' liability insurance must be added to this bill under Plan 3. There will be a lot of employee/employer liability lawsuits that will be excluded under the general liability coverages that are standard in practice at this time. Mr. Conger does not feel claim examiners and hearing boards can work together in the same location and come together on any kind of mediation. After a claim examiner has turned down a claim, or the claim is going to be in dispute, at that point, the claim needs to be transferred to some other forum. It does not need to be transferred to a court as there is still room for mediation. Mr. Conger feels this position should be moved to the Policy Holders Compliance Division of the state of Montana. If they cannot come to an agreement on an informal basis, then it could go to the Workers' Compensation Court.

Mr. Glen Drake, representing American Insurance Association, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 13.

OPPONENTS AND GENERAL COMMENTS OF SB 315 AND SB 330:

Mr. Doug Crandell, Chairman of the Montana Wood Products Association, and manager for Brand S Lumber, Livingston, Montana, stated there has been a 240% increase over the last five years in Workers' Compensation Rates. Mr. Crandell stated he does not feel he could complain about Workers' Compensation rates unless he cares for safety and puts that caring into practice. Mr. Crandell feels they have put that caring into practice. In the past 7 months at Brand S, they had had no lost time injuries. Yet, even considering the success of their safety record, the rates are still increasing. He was surprised to find neighboring states compensation rates substantially lower. This puts their lumber mill at a great competitive disadvantage with the national lumber market. Mr. Crandell feels the reason the Montana Workers' Compensation Division has problems is because of the law; it is very complex, long, and ambiguous, which opens the door for litigation. Also, the Liberal Construction Clause has created a problem, which is, when in doubt, liberally construe the law in favor of the claimant. Since the law is so confusing there is almost always doubt. Mr. Crandell's employees want the same things he does - if they are injured, they want fair compensation quickly, without the need to share the money with an attorney. They feel the advisory council's bill falls short because it does not simplify or clarify the bill. Mr. Crandell supports the Governor's bill because it is an easy bill to read and understand. In its clarity, SB 315 benefits the injured and uninjured worker and the employer; however, it is bad for those whose livelihood is enhanced by a system where litigation and settlements are the norm. They oppose SB 330, and support SB 315.

Mr. Jim Murry, representing the Montana AFL-CIO, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 14.

Mr. Duane Hudson, an injured worker who has gone through the process to obtain benefits, stated he contacted the Workers' Compensation Division to check on his benefits but they put him on hold and do not answer his questions. He said if they pass SB 315, he does not have someone to represent him and they will keep putting him on hold and not answer his questions. He suggested the worker pay some of the Workers' Compensation premiums and maybe the worker will pay more attention to the effects of this bill.

Mr. Jim Roscoe, representing Roscoe Steel, stated he meets weekly payrolls and costs daily. He feels Workers' Compensation's original intent has been changed and there is an incorrect attitude toward the act; it is case law for a relative few. He stated Roscoe Steel hired a man on a work release program from Montana State Prison in 1983. His productivity and efficiency began to decline, and in a week of extreme turmoil and failure to report to work, he filed what Mr. Roscoe considers to be a fraudulent claim. That same week he was returned to prison for violating a minor. Workers' Compensation claims they initiated benefits for this individual on September 26, 1986, and are asking Roscoe Steel when this individual will return to work. He told of another case history of an employee at their Missoula Plant who was injured July 12, 1985. He was a short term employee. Other employees have seen this individual working at a gas station and building a house since he left their employment. Also, on March 1986 he was convicted of felony theft. As of January 31, 1986, this individual has received \$11,975 from Workers' Compensation benefits. Also, in December 1986, EBI, a private insurer for Workers' Compensation paid this individual a lump sum of \$27,800, and as a result of that lump sum payment, cancelled their policy with Roscoe Steel. Mr. Roscoe stated not all Workers' Compensation cases at Roscoe Steel are bad, and the Workers' Compensation principal is good. He also stated if the rates keep rising, businesses will be extinct in Montana.

Mr. Gene Fenderson, representing the Montana State Building and Construction Trades Council, presented a copy of some statistics to be added to his testimony, which is attached as Exhibit 15. Mr. Fenderson stated there is a problem of fraud concerning the Workers' Compensation benefits. There are cases of employees taking advantage of the system and there are cases of employers not paying total compensation for their employees. He described a fraudulent claim which happened recently on a state building by an employer/contractor, who is known for cheating. This can be done very easily by hiring everyone as an independent contractor and if the worker happens to get hurt on the job, the employer tells the worker he will turn it in that he is an employee. This goes on heavily in the construction industry in Montana, and it has got to be stopped. The problems are not going to be cured by cutting benefits for workers as long as unscrupulous employees and employers get away with these actions. Mr. Fenderson requested the chairman and committee members to check into this type of thing. .

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Ms. Maggie Sheen, representing herself, gave testimony in support of SB 330. A copy of her testimony is attached as Exhibit 16.

Mr. Willis Pickle, representing himself, stated in October 1974, he was disabled through an injury. He had slipped in some grease left by another employee, and as a result lost his left arm and the fingers of his right hand and sustained back injuries in the accident. He filed for Workers' Compensation benefits and it took several weeks to receive any benefits. Mr. Pickle was almost evicted from his home, bills began to pile up, and then Workers' Compensation benefits finally began. He filed for a lump sum settlement which was granted. Over a 4 year period, Workers' Compensation paid Mr. Pickle \$25,000 in compensation benefits. He was told by Workers' Compensation after his accident that he was considered 100% disabled and entitled to lifetime benefits. In 1978, they cut off his benefits. He tried for 8 years to be reinstated with benefits. In October 1986, Mr. Pickle went to an attorney for help. Mr. Pickle asked Workers' Compensation Division to give him a copy of his complete file. They gave him a copy of his file for a cost of \$96.00. His attorney agreed to represent him for nothing because the attorney came to the conclusion Workers' Compensation had not fulfilled their promises and not seen to his rehabilitation. The State Rehabilitation refused to give him the type of vocation of his choice and they refused to work with him. Mr. Pickle then refused to work with them because he felt they were not concerned with his rights. Thus, his benefits were cut off three times. Mr. Pickle stated he simply asked for what was just and honest and he was denied it and is still being denied what he deserves.

Ms. Marilyn Nelson, a claims representative with Plan 1 and Plan 2 stated she has reviewed SB 315 and finds the process unworkable. This bill would significantly increase the cost to employers and to insurance companies.

Mr. Vern Erickson, representing Montana State Firemen's Association, stated it has been well documented the fire service is one of the most dangerous occupations, both in the area of injury and death. They feel they would rarely, if ever, be able to collect through SB 315. They are opposed to SB 315.

Mr. Ben Everett, who served on the Governor's Advisory Council, stated the council's proposal contains reform legislation that answers every complaint brought forth today. SB 330 is supported by the insurance industry, the Montana Association of Defense Council, Trial Lawyers, insurance representatives, laborers, and employers. SB 315 is asking for more responsibility and they cannot handle the responsibility they have now. There are cases of people entitled to receive benefits who are not receiving benefits, and people who should not be receiving benefits that are receiving them. This is poor, ineffective administration. This conflict of interest should not be added to. Mr. Everett urged the passage of SB 330.

Mr. Tom Keegan, a Helena attorney who represents both claimants and insurers in Workers' Compensation cases, stated the committee should listen to the people who know the business best. Mr. Keegan stated if the 5-step bureaucracy replaces the Workers' Compensation Court, it will not do justice to the injured worker. Mr. Keegan supports SB 330 with one exception, which is limiting the widow of the deceased worker to 10 years of benefits if the children are grown. Mr. Keegan feels this is a horrible way to balance the deficit.

Mr. Brad Luck, a Missoula attorney, stated he is concerned that no one is discussing the specifics of the two bills. SB 315 has not been fully explained to most employers. Most employers believe SB 315 promises speedy benefits, avoidance of litigation, and quick adjudication. However, SB 315 actually provides confusion, invites litigation, and it is anything but self administering. The heart of the division bill is the elimination of the Workers' Compensation Court and the replacement of a 5-step bureaucratic process which is a creation of a super bureaucracy. Mr. Luck stated the 5-step procedure will take a minimum of 3 years, but could take up to 5 years. He does not understand how this lengthy process could be considered an efficient administration of justice. The backers of SB 315 state it will cut down on litigation, and Mr. Luck agrees because the workers and employers cannot afford to go through that process. Also, SB 315 is replacing one Workers' Compensation Court Judge with three highly paid board members. How can this be a savings. The state of Montana cannot afford the additional cost this superbureaucracy will cost for manning each level with personnel. Mr. Luck stated in 1974, the Legislative Auditor did a study of the administration of Workers' Compensation Division. The June 1974 report stated the

Division function of handling the State Fund, being an insurance company, constituted an incestuous conflict of interest and it was recommended to be terminated. However, it was never totally terminated and 12 years later, in 1986, the exact concerns were voiced by the Governor's Advisory Council. Now the Division wants absolute and total control of the system. Employers are not aware of the problem the definition of injury is going to create. It will cut down on the number of Workers' Compensation claims and the possibility of common law claims is real, and there is a high probability of an increase of liability insurance. Mr. Luck said he has been hearing there is no use for people to come and talk about the particulars of this bill and to talk about what is really involved because it has been said it is "greased", and the Department of Labor has said there is nothing that can stop their bill. Mr. Luck finds this somewhat curious because the Division received a lot of support prior to anyone ever reading the bill. Mr. Luck stated personally, he has more confidence in the legislative process and it is his hope the committee will consider both of these bills and use the good from SB 315 and place it in SB 330 for some real reform that is cost effective.

Senator Lynch stated if it is "greased", it is not known to the chair.

Mr. Don Wilkens, representing the Lumber and Sawmill Workers in Libby, gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 17.

Mr. Don Jenkins, representing the Golden Sunlight Mine, Inc., gave testimony in support of SB 330. A copy of his testimony is attached as Exhibit 18.

Mr. Norm Grosfield, a Helena attorney who represents Workers' Compensation claims, and a prior Administrator for the Workers' Compensation Division, stated he supports SB 330. Mr. Grosfield reviewed the differences of the two bills. The Division adopted all the recommendations that would take away benefits from injured workers, plus, in some areas they have gone even further. The Division's bill eliminates the Workers' Compensation Court. Mr. Gorsfield totally favors the retention of the court and said he was involved in the creation of the court. The system that is being proposed is a complex system that does not provide an independent review. The Division states the worker has to appeal to this independent board; however, that is not true. The process takes you to an

employee of the Department of Labor and Industry to have the case heard. SB 315 specifically states the findings of fact of the hearing officer hired by the department, the same department which runs the State Fund, are conclusive unless they are not supported by substantial evidence. There is truly not an independent review as when you appeal to this commission, the commission is bound by the findings of fact. It would make more sense if this system was to be used to set up the first initial appeal at the commission level, which would remove some of the conflict problem. Mr. Grosfield stated the intent is to control the findings of fact. He said Senator Thayer asked the question, if a Workers' Compensation bill could be written in a simple, easy form so everyone could understand it. Mr. Grosfield explained the law in Workers' Compensation is relatively clear to the people who work with it on both sides. The Supreme Court clarified the permanent partial area in 1982 and the definitions are clear. The problem that is faced is the problem of fact in 90% of all cases that are litigated. Legislation cannot be drafted to control different factual situations. The definition of injury is basically the same definition all the jurisdictions of the United States and Canada use. There are some variations, but basically all jurisdictions cover repetitive trauma, unusual strains, and in a certain set of limited circumstances, it covers heart attacks and strokes. The Advisory Council recommended the evidence requirements be strengthened in that area. The proposal in SB 315 and SB 330 on aggravation will cut out a lot of potential cases in the heart attack area. There are two problems with putting the definition in as suggested. The first problem is it simply is not right, just, or fair. The second problem is a great danger is created in abolishing the Exclusive Remedy Rule and that is the pivotal rule of Workers' Compensation law. The initial law that was passed in 1909 was thrown out because a claimant could pursue a civil action as well as recover Workers' Compensation. If injury is defined so narrowly, then 40-50% of all injuries will be cut out with this definition; however, the Supreme Court states there must be an adequate remedy, and if you are not covered by Workers' Compensation, then it means a tort action. The third issue is the difference in subrogation, and that could be a minor issue. The Advisory Council recommended not to change the subrogation law, and the Division would reinstate the prior law which existed prior to the constitutional amendment and allow for recovery by the insurer against the third part.

The fourth issue is the Advisory Council stated a claimant should recover cost if they are successful before the Workers' Compensation Court. The Division's bill is removing that provision. The fifth area is permanent partial disability, and SB 330 will save the employer more than SB 315. The permanent partial area is one of the major areas where there can be cost savings. The sixth area is the area of rehabilitation. The Division's bill creates a complex, lengthy decision making process. Ten years ago there were no private rehabilitation vendors in the state of Montana. Today there are over 100. Mr. Grosfield believes there is a need for private rehabilitation vendors, and it should be recognized in the law. This is one of the major reasons there is such a deficit now, as all cases, even minor ones, are referred to rehabilitation. They are referred to private rehabilitation vendors because the state has too much work. Private rehab vendors charge between \$40-50 an hour. The primary reason for the high cost of temporary total impairment is because under the rehab system, the Division wants to place in law, people are kept on rehab for a long period of time and they give them temporary total impairment, and that is a high cost. Mr. Grosfield feels rehab is overutilized, and he suggests the committee look into that area closely. The seventh area is the lump sum and settlement area. It is a great benefit psychologically to the claimant to get the case completed, and it is also a great benefit to the insurance industry. In Oregon, they cut out all lump sum settlements, and it was industry that came in and demanded the law be reinstated to allow resolution of cases. This was costing them far too much and the paper work and administrative work was far too great. Mr. Grosfield stated it will cost more to operate SB 315, both from the benefit standpoint and from the complexity of the bureaucracy which the insurance industry will have to operate under.

Mr. Keith Olson, representing the Montana Logging Association, gave testimony in support of SB 315. A copy of his testimony is attached as Exhibit 19.

Ms. Bonnie Tippy, representing the Montana Chiropractic Association, submitted amendments for SB 315. A copy of the amendments is attached as Exhibit 20.

Mr. Ray Tilman, representing Montana Resources, Butte, Montana, stated there is some good in both bills. The problem is only 40% of the money goes to the injured workers. When administrators and attorneys take money

from the fund, it is a problem for the injured worker. Montana Resources works hard to prevent injuries and to rehabilitate injured workers. Mr. Tilman stated if the committee looks at both bills and incorporates the good points of each, then there will be a good bill.

Ms. Peg Hartman, representing the Department of Labor and Industry, stated they are opposed to SB 330 and support SB 315. Ms. Hartman stated she was the previous Administrator of the Unemployment Insurance Division. She said in that division, there is a process required by Federal Law that calls for a hearing office, a board, a district court, and a supreme court. The process has been supported as not having a conflict of interest and as being an impartial fair hearing process by extensive national case law. This process provides an incredible amount of speed and no delay of justice, because 120 days is all that may lapse before 85% of the cases must be settled, and most of those cases go through the board. There is a minimum attorney involvement in the Unemployment Insurance process because it is so fast and the law is so clear.

Mr. Mike Micone, representing Western Environmental Trade Association, stated they oppose SB 330 because of the reduction of the permanent partial benefits to 350 weeks. They believe SB 315 provides the workers of Montana better opportunities and benefits. The rehabilitation section in SB 315, which emphasizes a return to work program, is something they firmly believe should be in effect. They also support the elimination of the Workers' Compensation Court. Mr. Micone invited the committee to research the suggestions of fraud involved in Workers' Compensation, but asked that they please not hold up the deliberations of the Workers' Compensation laws.

Mr. Jerry Okonski, a logging contractor from Libby, stated they support SB 315. They recognize there is a need for an immediate solution to this costly problem so the businesses can remain competitive. Mr. Okonski invited any interested party to visit his operation to see the level of their safety and the treatment of their employees. They feel SB 315 provides the greatest good for the greatest number in the long run.

Tom Simkins, representing Simkins Hallin Lumber Company, gave testimony supporting SB 315. A copy of his testimony is attached as Exhibit 21.

DISCUSSION ON SENATE BILL 315 AND SENATE BILL 330:

Senator Haffey stated to his knowledge, there is nothing "greased" about either bill being presented today.

Mr. Luck stated being new to the process, you say things that do not get fully explained. He stated he should have explained his statement by saying regardless of what is being said outside, he has all the faith in the world this committee is going to consider two complicated proposals on a complicated problem, and come up with the appropriate answer.

Senator Haffey asked Mr. Grosfield to consider Ms. Hartman's testimony and explain why he believes SB 330 is the best starting place to control costs and why he cannot convince the Division SB 330 is the best starting place.

Mr. Grosfield stated he has great respect for Bob Robinson. He said the toughest job at the Division is not Mr. Robinson's job, but it is the claims examiner's job. Concerning the testimony of Peg Hartman, unemployment is a simple system because it is a simple insurance concept. There are very few issues of dispute and there is little money involved compared to Workers' Compensation. In Workers' Compensation there is what is called the digest system in law, and it sets forth various different subject areas. Workers' Compensation is one of the largest areas in the digest system to study because there are so many complex issues that can arise. Under the unemployment law there are approximately 2 or 3 complex issues that can arise and the money that is being dealt with is relatively small. Mr. Grosfield believed Senator Haffey's primary question was directed toward the issue of permanent partial disability and how it is handled. Mr. Grosfield explained there needs to be sufficient people to operate this and to keep on top of the cases. State Fund adjusters have too many cases. Generally, it is fairly clear. Most cases involve medical pay and if there is wage loss, they are placed on benefits. In theory the benefit should be paid to the worker 14 days after the injury. The injured worker stays on temporary total benefits until a physician states they have reached maximum healing. At the point when they have reached maximum healing, a determination is then made as to whether the injured worker is permanently totally disabled and should continue to receive the same benefit or if they are able to go back to work at their old job. If they return to work, their benefits are cut off. If it is determined they are partially disabled with a permanent condition, it is

broken down into two issues. There is a wage loss permanent partial disability which means there has to be a demonstration of true wage loss, and there is an indemnity award. Under both bills, permanent partial wage loss would be kept in the law. Under the Division's bill, the injured worker would receive the permanent partial wage loss for up to 500 weeks and under the Advisory Council's bill, the injured worker would receive permanent partial wage loss for up to 350 weeks. There is a cost savings with SB 330's approach. The Division would calculate an indemnity award on a medical impairment rating and under the Division's bill, the injured worker would get 20% of the 500 weeks of benefits. Under the current law, the indemnity approach allows for an impairment award plus additional considerations. The Division does not like that approach because it is not a simple easily calculated approach. Mr. Grosfield stated the impairment awards are basically meaningless; they are decided by a doctor. The doctor will say he will not judge if the injured worker can return to work or what his limitations will be in the work place, he will just follow the AMIA guide and testify it is an impairment award. The adjustors of the State Fund will review all of the information regarding a claimant and offer a settlement of an indemnity award assuming the person does not have a wage loss. Most cases are resolved this way, and they do not go to litigation. Under the Advisory Council's bill there would still be that analysis and an agreement would have to be reached. For permanent partial benefits, the Advisory Council's bill codifies the current law but cuts back on the potential recovery.

Senator Haffey asked Mr. Grosfield with the potential for additional litigation, and with a court in existence, would you still conclude the lower cost of premiums will flow from SB 330 rather than SB 315.

Mr. Grosfield replied yes, especially with the fact there will not be a closure of cases, the cases will have to remain open for at least 10 years. Most cases under the current system are resolved between one and three years after the injury.

Senator Haffey asked Professor Patterson to respond to Mr. Grosfield's previous statement. Professor Patterson explained when he referred to a conflict of interest, he was referring exclusively to the judging process. In the judicial process one of the highest goals of the legal

profession is the decider of fact. It has to be completely impartial. To put the decision making process in the same area that administers the system, colors it. If this process was transported to some other dispute arena, the judge would have to be disqualified. If this process is adopted, it could bring down the entire system. Attorneys could object they are not receiving due process, and his client was not obtaining access to the judicial system. The Exclusive Remedy Rule which protects the employer from massive damage litigation would crumble.

Professor Patterson stated this is a good system and no one has said how to make the system sound.

Senator Keating asked Judge Reardon, the Workers' Compensation Court Judge, with regard to the Liberal Interpretation Clause and the case law, if the legislature changes the law, which will the court give most weight to in their decisions, either case law or legislative intent. Judge Reardon stated he was also the former chief legal counsel of the Division for 4 years, and he defended approximately 100 of these cases. Liberal construction is archaic in the sense it goes back to 1915. It came in when the law was originally drafted. Judge Reardon believes the drafters of the original law felt until some experience and some fact situations were presented, and if, all things being equal, a decision should favor the claimant because they gave up their common law tort right. Over the period of 70 years, Judge Reardon cannot even estimate the many times the Liberal Construction statute was used as the singular basis to decide a case. Judge Reardon stated he had a case after the testimony was completed and the medical testimony was given for both sides, and Judge Reardon believed the claimant, but it seemed to be the question of the medical evidence. Judge Reardon relied on the Liberal Construction clause and awarded the benefits to the injured worker. The insurance company appealed his decision to the Supreme Court and the Supreme Court reversed the decision because all things being equal does not mean the claimant always wins. Judge Reardon does not know if any significant changes would come about by getting rid of the Liberal Construction Clause. As a member of the Governor's Advisory Council, Judge Reardon voted to strike that language, not because he felt it was a determination of outcome of cases, but because he feels the benefit of doubt has changed from the claimant to the insurance industry.

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Senator Keating asked Judge Reardon which carries more weight with the court, case law or statute. Judge Reardon stated first you apply the statute as written to a given set of facts. If the statute is not clear, then they will look to case law. If the law is revamped there will be no significant case law to rely upon. The clearer the statute the better, but what is clear to one person may not be clear to someone else.

Senator Keating asked Mr. Laury Lewis from his point of view, does Montana's Workers' Compensation system appear to be quite litigious compared to other systems. Mr. Lewis said he is familiar with the Nevada and California systems. In comparison to Nevada, Montana is highly litigious, and in comparison to California, Montana is fairly close. Senator Keating asked Mr. Lewis if the remedy would be tighter language, or a clearer definition to help reduce the amount of litigation. Mr. Lewis stated in his experience, an administrative hearing process is the best way to go.

Senator Thayer asked Mr. Lewis to explain his views of the rehabilitation system in Nevada. Mr. Lewis stated there was a trade-off made in Nevada which was highly litigious because it is an area that cannot be tied down, and it becomes a matter of legislative interest. In Nevada the situation was getting out of hand so they made a trade-off to get rid of other factors. When they determined permanent partial disability awards, it was based on an impaired rating system. This is a way to avoid litigation. Mr. Lewis stated the Nevada system works because there is a strong rehabilitation effort.

Senator Gage asked Mr. Lewis to compare the number of claims in Nevada to Montana's claims. Mr. Lewis stated he is not familiar with Montana's claims today, but Nevada has a two plan system; the self-insurers and the State Fund. Nevada's annual premium income is approximately \$165 million and they have 650 employees. Their hearings process is, if a claimant's claim is denied, he has the right to appeal that decision and it goes to a hearings process. No attorneys are allowed in this process. If the claimant or employer is still not satisfied, they can appeal to the appeals officer and attorneys are allowed at this step. The next step would be the district court. Mr. Lewis stated this system works well.

Senator Lynch asked Mr. Robinson if both bills contain the provision dealing with incarcerated people not being eligible for Workers' Compensation. Mr. Robinson replied yes.

Senator Lynch asked Mr. Robinson why the committee cannot receive the number and names of the illegal, non-paying employers. Mr. Robinson replied if the Workers' Compensation Division knew every uninsured employer they would have fined them. The ones the Division finds out about are ones that have an injury submitted and when they code the injury to the insurer, they find there is no insurance. At that point they know there is an uninsured employer. There are approximately 1,000 injuries submitted on an annual basis that have no insurance coverage, and there is only one person to audit the books of those firms and bring them into compliance. The Division takes a couple steps, which are to demand they obtain coverage for the employees, and they are fined a minimum of \$200, or double the premium they would have paid during the uninsured period. Senator Lynch asked Mr. Robinson to give the committee a figure of the amount of money the fund is losing from these illegal employers. Mr. Robinson stated he would try to get this information for the committee. Senator Lynch asked Mr. Robinson about the suggestion the bills were "greased", and if he attended a caucus meeting. Mr. Robinson stated they did not go to the Democratic caucus, but they were invited to the Republican caucus and made a presentation on the Workers' Compensation situation, which was the same presentation he made at the Senate Labor and Employment Relations Committee's Overview Hearing on Workers' Compensation on neither specific bill.

Senator Thayer asked Mr. Robinson if he feels with the passage of either bill, will there be a decrease of premium rates for employers. Mr. Robinson stated their actuary and experience tells them the State Fund rates are approximately 18-20% lower than they should be. Thus, the passage of SB 315 about equates with that, so to the extent costs are reduced 22%, it comes down to where the premium is now, and all of this will keep the State Fund even from this point on. If SB 330 passes, the cost reduction is not as much as in SB 315, and there would be an increase required. The State Fund's financial situation has been reviewed by the Legislative Auditor's Office to give a good idea of the cash projections in the future. Even with the reform in SB 315, the State Fund will not be able to pay benefits within 18-24 months. Senator Thayer asked Mr. Robinson to explain the definition of injury. Mr. Robinson stated they do not believe there will be a great amount of litigation due to this definition.

The definition where it speaks to stroke and heart attacks states if a doctor can determine that something occurred at the work place that would have caused the injuries, then they are covered. There must be a medical determination that something happened in the work place.

Senator Gage asked Mr. Robinson if the Workers' Compensation Administration and the Unemployment Insurance Administration cover the same kinds of expenditures. Mr. Robinson replied no, Workers' Compensation only covers medical costs of the injury and the wage loss due to the injury. Mr. Robinson stated the dollar amounts of the Unemployment Insurance system are smaller and the duration of time is shorter. Senator Gage asked Mr. Robinson if the Board of Industrial Insurance in SB 315 has anything to do with the Unemployment Insurance system. Mr. Robinson stated it would take over the responsibility of the current Board of Labor Appeals.

Senator Manning asked Mr. Robinson if it is the intent to delete benefits for cases involving repetitive trauma, under the proposed definition of injury in SB 315. Mr. Robinson replied yes. Senator Manning asked Mr. Robinson, under the definition of injury, is it the intention to delete compensable coverage for unusual strain. Mr. Robinson replied no.

Senator Lynch asked Mr. Robinson the salary of the current Labor Commissioner. Mr. Robinson replied, \$45,000. Senator Lynch asked Mr. Robinson if they would give three people each 80% of that salary in SB 315. Mr. Robinson replied they will give three people \$40,000. Senator Lynch asked what a support staff will cost for these three employees. Mr. Robinson replied they will be transferring the support staff with the Workers' Compensation Court across to the Board. The creation of a board and staffing the board will cost approximately \$75,000 annually more than the current system. However, if they add the judge as in SB 330, it would be a "wash". Senator Lynch asked Mr. Robinson who would be qualified to sit on the Board. Mr. Robinson replied it would be people selected by the Governor, who have some understanding of the Workers' Compensation system and process, and have the integrity to conduct the work, and also, one person has to be an attorney.

Senator Lynch asked Mr. Everett if someone is injured and the new law goes into effect, and the injury is not under the new definition of injury, but there are suitable grounds to proceed, will the injured party's recourse be to sue

the employer. Mr. Everett replied yes, if the injury is excluded from the definition, but because it is an injury, it can be an injury for common law purposes. Senator Lynch asked if this would be taken to the district court. Mr. Everett replied yes.

Senator Blaylock asked Mr. Grosfield if the state of Montana would be better off with just the two plans. Mr. Grosfield stated a good competitive three way system is a healthy system. In Mr. Grosfield's opinion, a State Fund controls the operations and premiums of the private carriers, but a sound three way system is a healthy system and controls premium costs.

Senator Blaylock asked Mr. Luck if he had any specific ideas for fine tuning the Workers' Compensation Court. Mr. Luck stated the number of problems that caused the influx of litigation in the Workers' Compensation Court are things that were addressed in the Advisory Council's bill, such as limiting attorney fees. Many people do run to court to get the insurers attention. SB 330 requires that before a claimant can file petition with the court, they have to make a demand upon the insurance company supported by appropriate documentation and the insurance company has 20 days to respond. That alone will drop the amount of cases being filed. Mr. Luck believes the court needs more control of the people who appear and with the types of actions being filed. SB 330 has rules that will apply to this.

Senator Keating asked Mr. Grosfield what would the effects be in Montana with a two plan system. Mr. Grosfield stated with the assumption the State Fund will get back on its feet, if you allow only private carriers and self-insurers to operate, they are controlled by a national rating organization and they inflated the cost of Workers' Compensation in the 1970's. Without the State Fund controlling the operations of the private insurance carriers, there would be an uncontrolled system and the national organization would unreasonably raise the rates.

Senator Thayer asked Mr. Grosfield if he helped draft SB 330. Mr. Grosfield replied yes, he had some input.

Senator Gage asked Mr. Grosfield to explain his views on the possibility of putting the state into the same situation private enterprise is, by being able to pick who they insure and then creating an assigned risk pool, as in other areas of insurance. Mr. Grosfield stated an assigned

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risk pool would have to be created and then the State Fund would have to be considered a fully competitive insurance carrier. Mr. Grosfield is not sure the state of Montana is large enough to do that and it may create more complexity than is needed. The State Fund can operate well below the premium cost of private carriers and one of the burdens it has to bear is it becomes the assigned risk pool. Mr. Grosfield stated it is an interesting concept and one he has not considered.

Senator Haffey asked Senator Van Valkenburg and Senator Williams in their closing if they are willing to work with the other side on the subject of the court and of merging the best parts of the two bills.

Senator Thayer asked Mr. Robinson to explain the difference of the two bills concerning normal labor market. Mr. Robinson stated the normal labor market is included in the Advisory Council's bill and it refers to a geographic area where the claimant lives. Basically, it means the job area a worker can travel to within a reasonable commuting distance and a job with an equitable wage. In SB 330, normal labor market speaks to a geographic area where you can find a job for the rehabilitated worker within this area, and if there is no job for that person in that area, that person will remain on benefits indefinitely. In Montana, a person can get hurt in a very small town and because there is no job within a reasonable commuting distance, they can stay on benefits indefinitely. SB 315 states Montana is the worker's job pool, and once a job is found, pay that person's costs of moving to that job.

Senator Keating asked Mr. Conger what would happen if Plan 3 were eliminated. Mr. Conger, Chairman of the Montana Classification and Rating committee, stated in the 1979 Session, the legislation was drafted because of the poor responses of National Council on Compensation Insurance to adopt statutorily a classification and rating committee in Montana. Every year the committee is presented with the suggested rate level, the rate level is given with input from the State Fund and from the National Council, and it is developed from Montana payrolls and Montana losses. Their rates have always tried to be competitive with the State Fund and they have felt they could compete at a rate of 15% above the State Fund. They set the rate at whatever level they feel they should be at. In Montana, they make the rates.

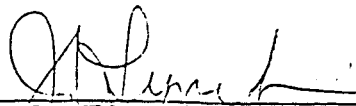
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Senator Keating asked Mr. Conger if there were only two plans, would his group set the rates. Mr. Conger replied his group would still control the rates.

Senator Williams closed by stating SB 315 is a bill that is trying to keep the deficit from getting worse than it already is. Senator Williams stated he hopes if there is any fraud in the system it is detected and resolved. He said any action taken on the Workers' Compensation system will effect every man, woman and child in the state of Montana. Senator Williams said he realized this is a heavy burden on this committee and the legislature, but he urged the committee to support this bill. He said he will do everything in his power to work with all involved parties to achieve a good Workers' Compensation system in Montana.

Senator Van Valkenburg closed by stating he is very willing to work with every party who has an interest in this matter. He believes the bulk of the testimony heard would lead a reasonable person to come to the conclusion the Workers' Compensation Court is a good court and one with a real value in the state of Montana. It is obvious there need to be changes in the court and the statutory law that exists and if the committee and everyone involved comes to that conclusion, then SB 330 is the basis to start the changes. He believes it would be easier to work from SB 330 and incorporate the good ideas from SB 315 into that bill. Senator Van Valkenburg said he is disappointed to hear Ms. Hartman compare Workers Compensation to the Unemployment Insurance system because they are vastly different, and the comparison of the two systems administrative work is naive'. He agrees with Mr. Luck's statement that SB 315 is a well-intended catastrophe waiting to happen. Senator Van Valkenburg stated the legislature has an obligation to make this work, and he pledged his cooperation to make it work.

ADJOURNMENT: There being no further business to come before this committee, the hearing adjourned at 6:20 p.m.



SENATOR JOHN "J.D." LYNCH, Chairman

jr

ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 14

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo.
Al Joyce Bell	Met to R- W			
George Fisher	Washington Freight Line	315		
Ed J. Doney	Rehabilitation Assoc of MT	315 330	X	
John J. McGary	Crawford & Co			
Gene Dean	Century Agency			
Howard Hallgren	Advisory Committee			
John H. Hylton	Montana Logging Assoc.			
Tom Trawers	SELF			
Bill Waller	Self			
Gregg Olsen	MT. Assoc. Dealers	315	X	
Bob Helwig	MT. ASSOC. DEALERS MT. MOTOR CARRIERS ASSOC	315	X	
Jim Smith	MT. Assoc Rehab	315	X	
Arny Lewis	NEVADA			
Ed Tarrach Jr.	PARK County Lumber	315	X	
Gene Ward	MT Self Insurance Assoc	315 330	X	
Mike Miller	SELF	315	X	
Keith Anderson	MT Taxpayers Assoc	315	X	
Bill Olson	MT. Contractors	315	X	
Frank C. Pittford	United Food & Commercial Workers	315		X
Donn Crandall	Brand-S Lumber	315	X	
Phil Bingerhoff	Bingers H. Construction	315	X	
an Bingerhoff	Bingers H. Const.	315	X	
Jeff Bingerhoff	MT Chamber of Commerce	315	X	
Ray Conger	Montana Council of Organizations	330	X	
Mark Rattray	CHAMPION MILK CO. P	315	X	
Ben Hardaway	MT MTR CARRIERS ASSN	315	X	

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Bob Kelleher	injured workers	SB 330	L	
Gene Himmelman	Governor	SB 315	✓	
KEITH PILSON	MT. Logging Assn.	SB 315	✓	
T. M. Rollins	ASARCO INC	SB 315	✓	
BUD CLINCH	MONT. LOGGERS ASSOC	SB 315	✓	
Wm. Jenkins	Golden S. Light Mtns	SB 315	✓	
Tim BERGSTROM	MT. STATE COUNCIL PRO FIRE FIGHTERS	SB 315		✓
ERN ERICKSON	" " " " "	"		✓
Don DeSavnet	Montana Steel	SB 315	✓	
John Winston	AMU	SB 315	✓	
Steve Shapiro	Workers Comp Act			
PAW GLENNY	ORION GROUP INC	SB 315	✓	
REN EVERETT	injured workers	SB 330	✓	
DAVE PATTERSON	Self	SB 330	✓	
Don Cohen	MT. Wood Products Assn	SB 315	✓	
Jim Casper	Cham Adv Council	SB 330		✓
LIM ROSCOE	ROSCOE STEEL	315	✓	
Mike [unclear]	WETA	315	✓	
D.R. THURMANT	WETA	315	✓	
Maxine Bullock	SRS - VR	315	✓	
Alan [unclear]	Cham Adv Assn	330		✓
STEVE SEIFERT	CFAC	315	X	
WADE J. DAHOLD	INJURED WORKERS	315	✓	
HOPKINS	MT Wood Products Assoc	315	X	
Tom Sunkins	Sunkins Hall	315	✓	
James [unclear]	USWA Local 72	315		✓

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Earl Campbell	SCIA	330	X	
William R. Riddle	self - for Labor	315		X
Arnold T. Green	self	330	X	
Edw. L. H.	MT State Forum Assn.	315		X
Carl B. Whitfield JR	Fireman Assn.	315		X
Donald R. Parsons	N.E.E.D.	315	X	
Steve Skundler		315		X
Lin Rouse		315	X	
Kate Williams	Lincoln Williams	315	X	
Jack Casman	C.F.A.C.	330		X
Ray Tilman	Montana Resources	315	X	
ii				
Clara Casanova				
Ann F. Helling	MBNDE - NNEA - NFIB	315	X	
Arza W. Woot	WUPC			
Cand. With				
Mary Lefant	ORBP	315		
Mary Buzan	Clery Auditor	315/330		
John B. Brown	United States Labor	315		X
Monstereau	Montana Teachers + C. H. W.	315	X	
Jerry Jack	MT Stevedores Assn.	315	X	
Ray Westgate	Alaska			
George J. Lusk	Statewide Assembly	315	X	
George J. Lusk	MT. R. T. D. C. L. W.	330		X
George J. Lusk	Self	330	X	
George J. Lusk	Self	315		X

Leaves

DATE. Sept 18 1927

VISITORS' REGISTER.

[illegible]

(This sheet to be used by those testifying on a bill.)

NAME: Willis Pritch DATE: 2-14-87

ADDRESS: 4124 N Rouse Bozeman MT

PHONE: 587-1728

REPRESENTING WHOM? ~~My~~ Myself & the worker

APPEARING ON WHICH PROPOSAL: 315

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT: This Bill will take all
rights away from the workers
and justify the abuse and
exploitation by Workers Comp
of the workers that is now
going on. This Bill will make
law, the right to not be
harrass and abuse injured

Thank you for your
Time

Willis Pritch

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: JERRY P. OKONSKI DATE: FEB 14, 198

ADDRESS: PO BOX 742 LIBBY, MT 59923

PHONE: 406-293-7823

REPRESENTING WHOM? TIMBER TECH INC + LOGGING CONTRACTORS IN LINCOLN

APPEARING ON WHICH PROPOSAL: SB 315

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: BROAD BASED SUPPORT

SB 315 NOT BREAKING ANY NEW GROUND - MEDICA
PANEL IN 43 OTHER STATES, SHOULD ALSO WORK
IN MONTANA.

NEED IMMEDIATE SOLN TO REMAIN COMPETITIVE
+ PRESERVE WAGES

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

330

NAME: HULT GREEN, HOWARD E DATE: 2-14-87

ADDRESS: 944 Ave B - Billings, MT 59102

PHONE: 259-1750 Work 259-0133 Home

REPRESENTING WHOM? Advisory Council

APPEARING ON WHICH PROPOSAL: Proposal # 330

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENT: Not point. Committee accept recommendation
to divide administration of the division and
the fund.

No 2 Do not narrow recommendation of
definition of injury. Could cause litigation
of other factors and result in additional
exposure of employees

No 3. If committee substituted 315 substitute
will be poor and result is problems
of great magnitude.

No 4. Choosing evaluator panel in # 315 is not for
to injured workers. We offer the attached
amendment to give worker and carrier more

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

complete information regarding the injury.
(note) Bonnie Tyepp will present this
amendment during her appearance

NAME: Mons Teigen DATE: 2/14/87

ADDRESS: Helena

PHONE: 442-3420

REPRESENTING WHOM? Mont. Stockgrowers + Cattle Women

APPEARING ON WHICH PROPOSAL: SR 315

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: Our organization strongly endorse SR 315. At its convention last
spring, the Stockgrowers voted to support legislation that will bring premium
more in line with adjoining states, further that benefits be
re-evaluated so that premiums collected will pay the benefit
Although the bill may not be perfect, it is the best
alternative presently available to us.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Ed Larrell Jr. DATE: 2-14-8

ADDRESS: P.O. Box 1176 Livingston, Mont. 59047

PHONE: 442-1790

REPRESENTING WHOM? PAK County Lumber Co.

APPEARING ON WHICH PROPOSAL: 315

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: James Smith DATE: 2-14-8,

ADDRESS: 1500 Walnut

PHONE: 443-0606

REPRESENTING WHOM? Mt. Assoc. For Rehab.

APPEARING ON WHICH PROPOSAL: SB 315

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Don DeTarnett DATE: 2-14-8

ADDRESS: Box 20598 Billings, MT

PHONE: 252-2161

REPRESENTING WHOM? Montana Steel & Billings Clerk

APPEARING ON WHICH PROPOSAL: SB 315

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: DAVID W. HARMAN DATE: 2-14-8

PHONE: 293-3788

APPEARING ON WHICH PROPOSAL: SB 315

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Lloyd Denny DATE: 9-13-87

ADDRESS: Box 8108 - Troy, MT.

PHONE: 295-5888

REPRESENTING WHOM? ASARCO Inc.

APPEARING ON WHICH PROPOSAL: S/B 315

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: DAVE Patterson DATE: 2-14-87

ADDRESS: University Montana Law School

PHONE: 243-4352

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: 330

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bradley Luck DATE: 2-14-

PHONE: W: 728-1200 H: 728-6317

APPEARING ON WHICH PROPOSAL: 315, 330

DO YOU: SUPPORT? 330 AMEND? OPPOSE? 315

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

(This sheet to be used by those testifying on a bill.)

NAME: Pong Crandall DATE: 2-14-87

ADDRESS: Box 1119 Livingston mt 59047

PHONE: 222-3360

REPRESENTING WHOM? Brand-S Montana Wood Prod.

APPEARING ON WHICH PROPOSAL: 315 or 330

DO YOU: SUPPORT? 315 AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Reg Hartman DATE: 2/14/8

ADDRESS: PO Box 1728

PHONE: 444-2749

REPRESENTING WHOM? Dept of Labor & Industry

APPEARING ON WHICH PROPOSAL: SB 330

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT: Does not include Industrial Insurance
Board

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Nicki Mason DATE: 2/14/87

ADDRESS: 1714 9th - Helena

PHONE: 443 5541

REPRESENTING WHOM? WRFTA

APPEARING ON WHICH PROPOSAL: SB 315 / SB 330

DO YOU: SUPPORT? 315 AMEND? OPPOSE? 330

COMMENT: We support those provisions in SB 315
that protect benefits for the injured worker.
We do believe the rehabilitation section encourages
a return to work ethic which we strongly
support.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: BRUCE VINCENT DATE: 2.14.8-

PHONE: 293.3458

APPEARING ON WHICH PROPOSAL: SB 315

COMMENT: _____

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Testimony of Senator Bob Williams on SB 315

Mr. Chairman, members of the Committee, Senate Bill 315 is a complete reform of Montana's Workers' Compensation Act. Reform is needed now if the system is to continue in this state. We have already passed the point where private insurers are willing to do business in Montana and are rapidly approaching the point of a complete collapse of the State Fund. Workers' compensation expenses to Self-insurers are straining the operating resources of the entire business itself.

Montana's rates are considerably higher than those of our immediate surrounding states. That puts Montana employers at a competitive disadvantage for regional work and forces Montana employers to relocate taking jobs away from our people. At a time when our economy is at one of its lowest points in history, we cannot continue to burden businesses with an ever increasing cost for workers' compensation insurance. The rates on logging, mining, milling, construction, transportation and agricultural jobs--the real wealth and job producing industries-- range from 10 percent to more than 30 percent of gross payroll and yet, for the State Fund, those rates are 20 percent too low.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/14/57
BILL NO. SB 315

You have seen the trend ^{of} costs for all insurers. This money originates with employers but the people really paying are the Montana employees who face wage reductions and unemployment because their employers can no longer afford to operate with declining sales and increasing operating costs.

Workers' compensation is not only a Montana problem. Thirty-three of the 49 State legislatures meeting right now are considering major workers' compensation legislation.

Fingers will be pointed at all involved in this system, and rightfully so--all parties involved in the system are to blame. The bottom line is that major surgery, not band-aids, is necessary for our ailing system.

Workers' compensation statutes are a social contract to protect both the injured worker and the employer. The Workers' Compensation Act was created to provide a no-fault safety net for the worker injured on the job and to protect the employer and fellow workers from litigation and tort actions stemming from a workplace injury.

Something has happened to our system when a law enacted to prevent and reduce litigation erodes to the point that nearly 60% of those workers off work for eight weeks or more are

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/14/87
BILL NO. 58 315

represented by attorneys, over 1200 cases are filed on a Court docket annually, and more than 40 cases are appealed to the Supreme Court in one year. Something has been lost when a system designed to prevent litigation has a special court as the first place to resolve a dispute.

What we have is a vague law that has invited dispute and reinterpretation to the extent that it now barely resembles its original intent and the policy established by past legislatures.

SB 315 addresses the Court, it clarifies section upon section of vague statutes, it makes benefits available swiftly and surely, and it does not significantly reduce benefits to the injured worker. More importantly, it is designed to assist the worker back into the labor force through expanded and better directed rehabilitation benefits.

In considering this legislation, we need to be concerned about two groups--injured workers and employers. The insurance companies, the attorneys, the medical providers and the rehabilitation counselors involved in the system are not central to our deliberations. They will all adjust.

This bill will meet the needs of the worker in a humane manner. It will make our system affordable for the employer. I urge you to give a do pass recommendation to SB 315.

SENATE LABOR & EMPLOYMENT

2/14/87

Mr Chairman, member of this committee
before I present my testimony concerning 513 315, I
would like to let you know why I am even
involved in workers comp.

In the last general session I carried
a bill allowing groups to self insure their workers as
the bill passed and is now law.

one year ago I came to Helena with 2 saw mill
operators. — cover Berg Lumber's problems — 29.6
M&P factor 1.75 \$ 51.80
8 months ago — Maddy's rising — 12.55% in 6
28.10% in 8

last fall — visit at workers comp a full day —
1 1/2 hr. with Judge Reardon
1 1/2 hr with Ben Huntington & Bob Robinson —
balance of day with Robinson —
past 2 weeks — 1 1/2 hr per day at workers comp
building — trying to gather any information I could
on the operation of the system —

If knowledge could be weighed by the pound —
"cc" 6

11/24

~~name is~~ name is Will DeFuria and

he is ~~the~~ attorney on the Idaho revenue

board - He has been there since 1967

Idaho's board consists of 1 - attorney
1 - employer
1 - worker/employee
and it works.

I forgot - try to Christ to you - "Workers come,
let me afford it." I had trouble believing

the facts & figures that I gathered up to
get this stuff together (we have to afford it
just now.

another, already, gentleman invited with me

at the colonial the other night to the op

strongly in favor of SB 315 and it kind

surprised me because I've known of him for

35 years or so in the T D E I L St. 115

is Russ Williams (re-released)

he would be here today if it weren't
for a previous engagement in D.C.

(among other things the I.B.E.W. ^{AFH-CIO} represents
line workers ~~was~~ which should or could
be one of the highest risks in the state.

Something we must remember is our action
taken on workers comp will affect every man
woman & child in the state of MT.

Mr. Chairman - Member of the Comm. you have much
to consider, please give ~~making~~ thought to ask
has us in this position today. Ask yourself
"should the courts make the policy or
should the legislature?"

orderly

SENATE LABOR & EMPLOYMENT

EXHIBIT NO.

BILL NO.

SB 315

Mr Chairman, if fingers are to be pointed
at any one, fingers should be pointed
at all of us but we are not here today
to lay blame, but we are here to
figure out what to do to make us feel
as the workers comp people in Nevada & I
do and that is to feel we have a good
strong workable system that will, right,
protect the worker at a cost effective
rate that will insure the system we will
always have employers, to pay the premiums
to make sure we ~~don't~~ don't find ourselves
in this position again & I feel your
approval & support of SB 315 will insure

1/ Jim Murry - chances of
for mistakes go - 250,000 +
up to 4,000 out of the fib at any one time -

2/ Duane Hubson - SB 315 is not perfect, a
we need to save the program in order to improve
on the services.

3/ Ben Everett - insurance support

4/ Brad Luck - concerned at costs of SB 315
Nevada & Idaho seem to be getting by -

Don't think would be a disaster - ~~a few~~ ^{an} ~~bill~~ ^{bill} will still be
SB 315 - projected to cut costs 20-25 %

SB 330 - project to cut costs 14-17 %

Any package of less than 20 % will

demand a further rate increase - Can we
H. C. +

WORKERS' COMPENSATION TERMS

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/1/87
BILL NO. SB 305

assessment period -- time during which an injured worker is evaluated for rehabilitation possibilities

beneficiary -- generally a surviving spouse and unmarried children under age 18, age 22 if in an accredited school

class codes -- a numeric four-digit code used by most workers' compensation insurers to group similar employments into accident exposure classifications

compensable -- what is determined will be paid for by the insurer

compromise settlement -- an agreement between an insurer and a claimant on the amount of benefits the claimant will receive

concurrently -- paying out two or more benefits at the same time

consecutively -- paying out two or more benefits one after the other

conversion -- turning benefits that would normally be paid out over time into a lump sum payment

discount -- a reduced amount of a benefit, based on the idea that a lump sum of a benefit paid now is worth more than it would be paid out over time, because the receiver of the sum could invest it

impairment -- a medically determined physical restriction of a worker that could either cause the worker to be unable to work, or may inhibit the worker physically but not prohibit the worker from holding a job

incidence rates -- a measure of the number of accidents occurring in a given period of time

indemnity -- principally an award to pay for a loss that may occur sometime in the future

lost time injury -- an occurrence where the injured worker fails to return to the next scheduled work shift

lump-sum settlement/payment -- the conversion of future biweekly benefit payments into a single immediate payment

maximum healing -- the point at which a worker is restored medically as far as possible as the permanent character of the work-related injury permits

medical benefits -- generally any procedure, care of medicine prescribed by a physician licensed to practice in Montana, includes hospital care

occupational disease -- all diseases contracted from and in the course of employment, not an injury

pay lag -- the amount of time elapsed between acknowledgement and payment

permanent partial -- a condition when a worker's injuries are expected to last indefinitely, but involve only a part of the body

permanent total -- a condition when a workers' injuries are expected to last indefinitely, and involve the major part of the body

provider -- someone who gives a service to an injured worker

retraining period -- time during which an injured worker is participating in a rehabilitation retraining program

S.I.C. Codes -- Standard Industrial Classification Codes used to identify industry groups

SAWW -- State's Average Weekly Wage as annually determined by the Montana Department of Labor and Industry

social security offset -- an amount by which insurers can reduce wage compensation benefits when the injured worker is also entitled to social security disability

subsequent injury fund -- provides funding to limit insurers liability to 104 weeks in vocationally handicapped cases

temporary total -- a condition when a worker's injuries are not expected to last indefinitely, and involve the major part of the body

unfunded liability -- the amount owed by an insurer for all current or future claims against it that have not yet been paid

wage loss -- the concept that a worker is losing wages while injured (and will be compensated for that wage loss)

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 21-177

BILL NO. 23 3/5

2:30

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 2/14/27

BILL NO. SB 315

Re Closing -

Mr. Chairman & members of this committee
some how, we as a state have
allowed our workmen comp program to
project out to the public the image
that we should be blamed for every
business ~~fail~~ failure in the state. True
or false to each failure, we have to do
something to change that thinking. SB 315 Ca

Mr. Chairman, members of this committee - we
have heard reference to Idaho and their
successful workmen comp system. I called
yesterday & spoke to an elderly gentleman and
he was quite proud of their system. It's in 121

Testimony of Bob Robinson

Mr. Chairman, Members of the Committee, Senate Bill 315 will restore balance and predictability to Montana's Workers' Compensation system. It will benefit all workers and employers. Recent projections indicate that, without this reform, the ability of the State Fund to pay benefits through the next biennium is in jeopardy. Employers in many industries are operating in the red or right on the margin of profitability. Continued uncontrolled premium increases will cause more businesses to close or lay off employees. Right now, the State Fund January rate increase is being paid for by salary reductions to many employees.

The Workers' Compensation Advisory Council's recommendations provide the basis for the reforms contained in SB 315. But, to provide true and lasting reform, SB 315 necessarily goes beyond the Council's recommendations. SB 315 returns Montana's system to the philosophy intended by the original law. It will provide full medical coverage for the injury and financial support until the injured worker can return to work. It emphasizes this return-to-work philosophy by providing additional benefits and stressing rehabilitation. In a series of public meetings held last spring, injured workers, employers and the public testified about their concerns with the system and the Council's preliminary recommendations. Senate Bill 315 addresses nearly every concern expressed, whether in relation to costs or benefits reduction or perceived abuses.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 2/14/87

PAGE NO. 52 3

The costs of temporary total and permanent partial benefits have increased 352% and 178% respectively over the last six years. The number of accidents during that period have remained constant and lost time injuries have actually declined. The state average weekly wage (the compensation rate of inflation) has increased only 58% over the same period. The percentage of claimants receiving temporary total (or maximum) benefits for more than twelve weeks have nearly tripled since 1979. This bill addresses such uncontrolled costs by getting at the root of the problem by forcing insurers to better serve the needs of the claimant through active rehabilitation and job placement.

Montana's legislature has said over and over again that lump sum settlements should be the exception, not the rule. In practice, lump sum settlements are the rule rather than the exception and are both a major disincentive to return to work and a major incentive for increasing attorney involvement. This bill addresses the issue by limiting lump sums to actual impairment for partial injuries and for the necessities of life and debt restructuring with a \$20,000 limit for permanent total injuries. The Council recommendation rejects the 1985 Legislature's attempt to control lump sums. The recommendations on lump sum settlements would broaden the criteria for approval of lump sums and actually invite greater attorney involvement.

SENATE LABOR & EMPLOYMENT

2
8/4/77
5/3/5

At the hearings the working man opposed the Council's reduction of the permanent partial benefits limit from 500 weeks to 350 weeks. SB 315 retains the 500-week limit currently in the law and makes all injured workers eligible for the maximum benefit, if they are actually losing wages as a result of injury.

This bill defines a compensable injury as one that definitely occurred on the job. It would eliminate stress and micro-trauma as compensable injuries and would require medical verification that heart attacks and strokes resulted from an event at work to be compensable.

The standard of proof that an injury occurred at work or aggravated a pre-existing condition is raised from a "possible" to "probable" standard in this bill. This adjustment should eliminate some abuses.

Montana's workers' compensation system has become a substitute for an unemployment system through more and more restrictive interpretations of the normal labor market. SB 315 provides new benefits that assist workers in finding new employment and in moving to the new job. Additional benefits would be created as an incentive for prospective employers to provide on-the-job training.

SENATE LABOR & INDUSTRY
EXHIBIT NO. 2
DATE 2/1/87
BILL NO. 315

This bill does not reduce benefits other than for a six-day waiting period before wage compensation benefits begin, and, in fact, expands the availability of permanent partial benefits from the present system. It provides, for the first time, cost of living adjustments for injured workers who are permanently, totally injured.

There is no windfall in this bill for the majority of Montana's employers that are insured by the State Fund. The best they may be able to hope for in the next few years is a leveling of rates. Employers insured by private companies whose premiums are at an adequate level may see a 20 to 25 percent decrease.

Poor claims management will be suggested as the problem with the system. There is no doubt that errors and omissions have occurred at the State Fund. This was caused by workload increase. However, significant improvement is being made daily. Past due bills have been brought current, and compensation payments are being made to claimants sooner after the accident has been accepted. Earlier contact will be made with the injured worker just as soon as the Division's supplemental budget is approved.

All Montana workers and employers are suffering under Montana's workers' compensation system, not just the injured. Passage of this bill in its entirety will help restore health to all of us.

2
2/14/87
SA 315

DEPARTMENT OF LABOR & INDUSTRY

DIVISION OF WORKERS' COMPENSATION

TED SCHWINDEN, GOVERNOR

MARGARET "PEG" CONDON BLDG
5 SO. LAST CHANCE GULCH

STATE OF MONTANA

February 13, 1987

HELENA, MONTANA 59601

TO: Members of the Senate Labor & Employment Relations Committee

RE: Settlement and Legal Fee Data

FROM: Robert J. Robinson, Administrator
Workers' Compensation Division *RJ Robinson*

The following information is provided in response to the request made at the committee meeting on February 10, 1987.

The State Compensation Insurance Fund has a three-attorney legal staff to defend the Fund in cases brought before the Workers' Compensation Court and the Supreme Court. The legal unit is supported by one administrative assistant and a para-legal assistant. In addition, the State Fund contracts with 4 to 6 law firms, as well as the Attorney General's office, on an as needed basis at hourly rates.

The following is a breakdown of our costs for legal defense for fiscal 1986.

State Legal Unit	\$151,558
Contracted Legal Counsel	<u>\$515,000</u>
Total	\$666,558

We have no information on the defense costs for Plan 1 and 2 insurers.

We have no way of providing exact information as to the amount of legal fees paid by claimants or assessed against insurers by the Court. In an attempt to provide some information on this subject, the Division collected data on 25% of all affidavits for Plan 1 and 2 settlements awarded in 1986. The sample was random in that every fourth settlement affidavit was selected.

SENT BY

12

2/17/87

DB 3/5

Page 2

February 13, 1987

Members of the Senate Labor & Employment Relations Committee

RE: Settlement and Legal Fee Data

Affidavits specifically identify the final disposition of settlement funds including the amount allocated for attorney fees. Settlement affidavits are reviewed by the Division and approved by the Court.

The results of the sample indicate that approximately 24% of the settlement amount for those claimants represented by attorneys were allocated for attorney fees.

In 1986 approximately \$38,000,000 in settlements were approved for all three plans.

Attached is a schedule of settlements by attorney and by insurance plan type. The table is a computation of the Division's weekly settlement reports.

SENATE LABOR & EMPLOYMENT
CHIEF CLERK 3
DATE 2/14/87
FILE NO 328 315

SETTLEMENTS SUMMARY
FROM 1/1/86 TO 12/31/86
ATTORNEYS A - L

	PLAN 1 & 2 SETTLEMENTS		PLAN 3 SETTLEMENTS		ALL PLANS	
TORNEY NAME	NUMBER	TOTAL	NUMBER	TOTAL	NUMBER	GRAND TOTAL
Aiken	1	\$32,000.00			1	\$32,000.00
Anderson	1	\$6,000.00			1	\$6,000.00
Anderson	3	\$111,000.00	3	\$97,151.34	6	\$208,151.34
M. Ashley	1	\$8,000.00			1	\$8,000.00
P. Atkins	1	\$11,691.00			1	\$11,691.00
Bach			7	\$72,436.19	7	\$72,436.19
Baillie			1	\$1,500.00	1	\$1,500.00
Baiz			3	\$56,988.76	3	\$56,988.76
Barber	1	\$3,733.26			1	\$3,733.26
Bartlett	2	\$63,000.00			2	\$63,000.00
Bauer	2	\$52,261.00			2	\$52,261.00
Bauxum			1	\$3,500.00	1	\$3,500.00
Beaudette	1	\$20,000.00	2	\$10,451.00	3	\$30,451.00
Bechhold			1	\$6,991.00	1	\$6,991.00
Beck	9	\$237,725.00	14	\$297,101.45	23	\$534,826.45
Bell	2	\$39,992.42	1	\$1,813.50	3	\$41,805.92
Bennett			1	\$5,319.81	1	\$5,319.81
Berg	1	\$4,263.60			1	\$4,263.60
Best	2	\$82,926.00	1	\$22,500.00	3	\$105,426.00
Boggs	6	\$76,775.00	6	\$23,033.55	12	\$99,808.55
Boland	4	\$37,225.00	6	\$143,678.77	10	\$180,903.77
Boschert			1	\$1,000.00	1	\$1,000.00
Bosher			1	\$4,500.00	1	\$4,500.00
Bothe	38	\$928,510.70	38	\$865,860.50	76	\$1,794,371.20
Bottomly	3	\$137,750.00	6	\$127,327.80	9	\$265,077.80
Bottomly	1	\$33,979.81	3	\$138,498.10	4	\$172,477.91
Bridenstine			1	\$1,386.71	1	\$1,386.71
Brosius			1	\$13,921.63	1	\$13,921.63
Brown	1	\$6,293.00			1	\$6,293.00
Brown	3	\$89,500.00	4	\$64,924.57	7	\$154,424.57
Brown	1	\$40,000.00			1	\$40,000.00
Budewitz			1	\$4,426.28	1	\$4,426.28
Bulger	1	\$34,152.00			1	\$34,152.00
Bulman	11	\$118,988.30	19	\$183,954.27	30	\$302,942.57
Burgess	5	\$109,151.00	6	\$34,733.39	11	\$143,884.39
Burgess	3	\$60,027.50			3	\$60,027.50
Burns	2	\$130,256.60	1	\$2,835.00	3	\$133,091.60
Cate			3	\$8,059.51	3	\$8,059.51
Cok			2	\$56,000.00	2	\$56,000.00
Conklin			1	\$600.00	1	\$600.00
Connel	1	\$70,006.20			1	\$70,006.20
Conner	3	\$96,440.30	2	\$57,046.57	5	\$153,486.87
Connors			7	\$178,186.70	7	\$178,186.70
Corn	3	\$88,453.35	1	\$19,878.00	4	\$108,331.35
Cotner	1	\$57,000.00	1	\$27,398.81	2	\$84,398.81
Crowe	2	\$23,437.93	4	\$24,418.85	6	\$47,856.78
Cummings	3	\$45,003.90			3	\$45,003.90
Dahood	3	\$76,000.00	2	\$48,200.00	5	\$124,200.00
Daley	1	\$7,700.00	2	\$37,462.27	3	\$45,162.27
Datsopoulos	20	\$415,522.80	19	\$210,992.18	39	\$626,514.98
D. Daue	1	\$16,500.00			1	\$16,500.00

SENATE LABOR & EMPLOYMENT

FILE NO. 2
DATE 2/1/92
FILE NO. 26 3/5

Davis			1	\$59,148.18	1	\$59,148.18
Dayton	3	\$126,429.46	2	\$25,207.00	5	\$151,636.46
Donovan			1	\$8,580.00	1	\$8,580.00
Doubek			1	\$4,290.00	1	\$4,290.00
Dowling			2	\$7,147.00	2	\$7,147.00
Drake			1	\$7,500.00	1	\$7,500.00
Duckworth	1	\$50,226.40	2	\$32,238.60	3	\$82,465.00
Dunn	1	\$6,200.00			1	\$6,200.00
Eakin	1	\$23,012.50	1	\$26,633.95	2	\$49,646.45
Edaiston	2	\$11,500.00	1	\$9,913.16	3	\$21,413.16
Edwards	1	\$25,750.00			1	\$25,750.00
Eiselein	6	\$104,760.98	6	\$80,630.57	12	\$185,391.55
Ellingson	3	\$52,000.00	2	\$13,000.00	5	\$65,000.00
Everett	8	\$289,400.00	14	\$367,016.30	22	\$656,416.30
Fain			1	\$715.00	1	\$715.00
Ferguson	1	\$14,650.00	5	\$29,280.35	6	\$43,930.35
Finn	5	\$30,150.00	9	\$114,653.98	14	\$144,803.98
Fitzgerald	2	\$12,180.00	2	\$22,067.50	4	\$34,267.50
Friedman			1	\$8,212.50	1	\$8,212.50
Frost	1	\$69,250.00			1	\$69,250.00
Gabriel	4	\$162,775.00	12	\$289,520.86	16	\$452,295.86
Garvey			1	\$57,786.60	1	\$57,786.60
Gebhardt			1	\$27,391.56	1	\$27,391.56
Geiszler	1	\$12,405.04			1	\$12,405.04
German	1	\$10,000.00			1	\$10,000.00
Goldman	13	\$331,781.40	2	\$32,873.00	15	\$364,654.40
Goldman	2	\$52,000.00	1	\$31,552.25	3	\$83,552.25
Grant	1	\$57,000.00			1	\$57,000.00
Gray	1	\$10,000.00			1	\$10,000.00
Graybill	1	\$45,000.00			1	\$45,000.00
Greef	1	\$15,000.00	2	\$602.88	3	\$15,602.88
Grenfell	6	\$132,008.76	3	\$56,912.00	9	\$188,920.76
Grosfield	6	\$242,790.00	22	\$401,809.28	28	\$644,599.28
Guenther			2	\$14,119.00	2	\$14,119.00
Gunderson			1	\$5,576.99	1	\$5,576.99
Haker	1	\$10,000.00			1	\$10,000.00
Halverson			3	\$47,804.86	3	\$47,804.86
Halverson	25	\$467,628.11	20	\$448,747.21	45	\$916,375.32
Halvorson	1	\$1,000.00			1	\$1,000.00
Hand			1	\$22,451.00	1	\$22,451.00
Hansen	1	\$6,000.00			1	\$6,000.00
Hanson	1	\$56,564.00			1	\$56,564.00
Haretlius			1	\$13,850.00	1	\$13,850.00
Harman	1	\$15,000.00			1	\$15,000.00
Harman			1	\$2,000.00	1	\$2,000.00
Harrington	7	\$169,362.50	17	\$321,484.24	24	\$490,846.74
Harris	1	\$67,683.85	1	\$5,000.00	2	\$72,683.85
Harrison			1	\$18,304.38	1	\$18,304.38
Hartelius	1	\$36,000.00			1	\$36,000.00
Hartford	5	\$93,979.30	8	\$84,995.98	13	\$178,975.28
Hash			1	\$4,989.93	1	\$4,989.93
Hauf	1	\$10,000.00			1	\$10,000.00
Haxby	5	\$137,150.00	2	\$9,012.50	7	\$146,162.50
Hayes	1	\$40,000.00			1	\$40,000.00
Haynes	1	\$2,500.00			1	\$2,500.00
Healow			1	\$47,000.00	1	\$47,000.00
Heath			1	\$13,725.80	1	\$13,725.80
Hennessy	1	\$12,000.00			1	\$12,000.00
Herriott	1	\$21,112.00			1	\$21,112.00
Hileman	1	\$14,500.00			1	\$14,500.00

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2/14/87
BILL NO. 54 315

Hingle	4	\$108,076.00	1	\$276.20	5	\$108,352.20
Holland	1	\$47,000.00			1	\$47,000.00
Holland	1	\$20,502.00			1	\$20,502.00
Hollow	1	\$40,000.00			1	\$40,000.00
Hoyt	2	\$76,250.00	2	\$36,887.77	4	\$113,137.77
Hunt			2	\$30,346.25	2	\$30,346.25
Ingraham	2	\$38,950.00	1	\$20,868.52	3	\$59,818.52
Iwen	1	\$15,000.00	2	\$11,492.50	3	\$26,492.50
Jackson	5	\$48,696.40	8	\$196,397.95	13	\$245,094.35
James	2	\$37,387.29	1	\$11,820.00	3	\$49,267.29
Jarussi	5	\$113,302.00	17	\$343,403.17	22	\$456,705.17
Jenkins			1	\$65,750.00	1	\$65,750.00
Joyce	1	\$34,625.00			1	\$34,625.00
Kaspar	2	\$10,739.09	8	\$89,813.08	10	\$100,552.17
Keefer	11	\$189,167.50	19	\$368,983.27	30	\$558,150.77
Keegan	5	\$208,312.50	1	\$29,300.00	6	\$237,612.50
Kelleher	14	\$303,019.25	9	\$109,524.04	23	\$412,543.29
Keller	7	\$164,038.42	12	\$171,903.90	19	\$335,942.32
Kelly	5	\$197,180.78	1	\$5,540.00	6	\$202,720.78
Kerr			3	\$15,665.80	3	\$15,665.80
Knuchel	1	\$20,000.00	3	\$57,909.97	4	\$77,909.97
Kozaliewics	1	\$18,000.00	2	\$24,409.32	3	\$42,409.32
Kronmiller			1	\$9,277.50	1	\$9,277.50
Laab			1	\$38,310.71	1	\$38,310.71
Larrivee			3	\$73,774.16	3	\$73,774.16
Larson			1	\$23,000.00	1	\$23,000.00
Lauridsen	2	\$48,200.00	10	\$60,783.74	12	\$108,983.74
Leg			1	\$6,995.80	1	\$6,995.80
Lerner	6	\$181,490.00	5	\$77,191.95	11	\$258,681.95
Lewis	20	\$1,108,551.60	29	\$1,020,892.04	49	\$2,129,443.64
Lind	3	\$164,367.20	1	\$16,000.00	4	\$180,367.20
Lynnaugh	14	\$311,845.00	14	\$150,781.27	28	\$462,626.27
Lynch	1	\$4,000.00			1	\$4,000.00

TOTAL	389	\$9,970,215.00	489	\$8,695,199.83	878	\$18,665,414.83
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SENATE BILL NO. 2
EXHIBIT 1
DATE 2/14/12
BILL NO. 20-3/15

SETTLEMENTS SUMMARY
FROM 1/1/86 TO 12/31/86
ATTORNEYS M - Z

ATTORNEY NAME	PLAN 1 & 2 SETTLEMENTS		PLAN 3 SETTLEMENTS		ALL PLANS	
	NUMBER	TOTAL	NUMBER	TOTAL	NUMBER	TOTAL
B MacDonald	1	\$41,550.00			1	\$41,550.00
Mackey	6	\$116,808.76	1	\$5,295.00	7	\$122,103.76
Mahan			2	\$23,279.55	2	\$23,279.55
Malee			3	\$73,600.00	3	\$73,600.00
Malloy			1	\$3,662.50	1	\$3,662.50
Maltese	1	\$31,560.00			1	\$31,560.00
Manley			1	\$3,403.74	1	\$3,403.74
Marble	2	\$83,000.00	2	\$28,530.00	4	\$111,530.00
Maristuen			1	\$3,000.00	1	\$3,000.00
Marks	4	\$99,319.23	4	\$53,829.77	8	\$153,149.00
Marsillo			3	\$45,381.80	3	\$45,381.80
Martin	2	\$172,500.00	3	\$59,417.00	5	\$231,917.00
L. Martin	1	\$2,760.97			1	\$2,760.97
Martin	2	\$61,020.00			2	\$61,020.00
Martinson	1	\$10,000.00			1	\$10,000.00
Massaan			1	\$37,936.67	1	\$37,936.67
McAlear	1	\$1,025.50	1	\$7,336.54	2	\$8,362.04
McCafferty			1	\$21,517.94	1	\$21,517.94
McChesney	5	\$49,236.89	5	\$84,070.74	10	\$133,307.63
McCracken	1	\$18,000.00			1	\$18,000.00
McCurdy	2	\$81,000.00	1	\$7,311.00	3	\$88,311.00
McGarvey	3	\$143,293.58	2	\$69,043.53	5	\$212,337.11
McGee	1	\$61,000.00			1	\$61,000.00
McGee			1	\$145.18	1	\$145.18
McGregor			1	\$14,676.18	1	\$14,676.18
McGregor			1	\$10,000.00	1	\$10,000.00
McKeon	3	\$21,000.00	12	\$222,069.05	15	\$243,069.05
McKeon	5	\$83,744.97	3	\$33,487.49	8	\$117,232.46
McKittrick	3	\$79,919.01			3	\$79,919.01
McKurdy			1	\$90,000.00	1	\$90,000.00
McNiel	3	\$55,750.00	1	\$1,340.00	4	\$57,090.00
Meglen			1	\$6,700.00	1	\$6,700.00
Meissner			1	\$500.00	1	\$500.00
Melcher	1	\$26,433.90	5	\$52,975.71	6	\$79,409.61
Meyer			1	\$8,125.00	1	\$8,125.00
Milodrgovich	4	\$28,065.00			4	\$28,065.00
Moe	2	\$19,305.00			2	\$19,305.00
Molloy	1	\$41,000.00			1	\$41,000.00
Moore			1	\$3,704.25	1	\$3,704.25
Morales			1	\$415.50	1	\$415.50
K. Morales	2	\$35,854.00	1	\$415.50	3	\$36,269.50
Morin			2	\$25,513.49	2	\$25,513.49
Morse	1	\$36,000.00			1	\$36,000.00
Moses			1	\$1,188.00	1	\$1,188.00
Mouat			1	\$5,012.49	1	\$5,012.49
Munro	2	\$102,856.00			2	\$102,856.00
Murphy			1	\$14,505.00	1	\$14,505.00
Wardi			1	\$13,990.65	1	\$13,990.65
Nye	1	\$55,400.00			1	\$55,400.00
Oass	1	\$15,000.00	3	\$22,667.98	4	\$37,667.98
Olson	1	\$560.00			1	\$560.00
Overfelt	8	\$179,110.12	7	\$184,378.01	15	\$363,488.13

S. H. H. H.
EXHIBIT 17A-3
DATE 3/14/87
FILE NO. 58-315

Overfelt	5	\$86,323.00	2	\$7,868.32	7	\$94,211.32
Parish	1	\$3,177.25			1	\$3,177.25
Parker			1	\$3,366.50	1	\$3,366.50
Parrish			1	\$7,196.00	1	\$7,196.00
Patten			2	\$12,723.36	2	\$12,723.36
Petaja	1	\$11,768.40	3	\$124,142.72	4	\$135,911.12
Peterson			1	\$20,196.94	1	\$20,196.94
Peterson	1	\$14,000.00	1	\$16,375.00	2	\$30,375.00
Picotte			8	\$117,257.24	8	\$117,257.24
Picotte	17	\$685,270.42	17	\$273,184.93	34	\$958,455.35
Plath	1	\$2,750.00	5	\$36,307.00	6	\$39,057.00
Pohl	1	\$15,482.00	4	\$77,286.00	5	\$92,768.00
Preazeau	11	\$318,556.10	11	\$78,444.24	22	\$397,000.34
Frindle	6	\$51,230.00			6	\$51,230.00
Pyfer	4	\$82,976.56	10	\$118,643.82	14	\$201,620.38
Rasler	1	\$53,963.00			1	\$53,963.00
Randono			5	\$27,642.92	5	\$27,642.92
Rebeck	1	\$2,500.00			1	\$2,500.00
Regnier	5	\$292,500.00	3	\$23,126.96	8	\$315,626.96
Rennie			1	\$327.84	1	\$327.84
Rennie	1	\$9,328.10	2	\$13,113.60	3	\$22,441.70
Renz			3	\$2,439.38	3	\$2,439.38
Rice	1	\$8,310.00			1	\$8,310.00
Rice Jr			3	\$12,705.20	3	\$12,705.20
Richter	1	\$8,695.00	5	\$49,449.95	6	\$58,144.95
Ring			1	\$1,601.60	1	\$1,601.60
Roberts	8	\$212,887.50	4	\$99,891.50	12	\$312,779.00
Robinson	1	\$32,000.00			1	\$32,000.00
Rosbach	2	\$28,950.00			2	\$28,950.00
Roy			3	\$115,912.50	3	\$115,912.50
Sand	5	\$31,273.33	4	\$109,919.20	9	\$141,192.53
Sands			2	\$54,545.92	2	\$54,545.92
Savage	4	\$82,501.87	1	\$10,000.00	5	\$98,501.87
Schraudner	1	\$36,000.00			1	\$36,000.00
Schuyler	1	\$1,255.00			1	\$1,255.00
Screnar			1	\$11,707.71	1	\$11,707.71
Seidler			1	\$3,293.00	1	\$3,293.00
Seifer			1	\$8,252.00	1	\$8,252.00
Sewell			1	\$3,840.53	1	\$3,840.53
Sheehy	12	\$400,210.69	15	\$182,811.45	27	\$583,022.14
Sheridan	1	\$30,125.00			1	\$30,125.00
Sherlock	1	\$19,123.44			1	\$19,123.44
Simonton	1	\$42,895.00			1	\$42,895.00
Skaggs	9	\$335,941.44	15	\$140,373.32	24	\$476,314.76
Skakles	2	\$48,350.00	1	\$1,265.70	3	\$49,615.70
Skakles			1	\$1,265.70	1	\$1,265.70
Skjelset	6	\$177,746.00	11	\$177,622.89	17	\$355,368.89
Skorheim	2	\$44,195.00	6	\$110,680.63	8	\$154,875.63
Slovak	2	\$5,636.35	4	\$21,363.60	6	\$26,999.95
Small			1	\$4,316.79	1	\$4,316.79
Smith	7	\$112,242.55	3	\$25,475.37	10	\$137,717.92
Smith	1	\$60,000.00			1	\$60,000.00
Smoyer	1	\$34,000.00	2	\$19,500.00	3	\$53,500.00
Sommerfeld	5	\$132,218.75	10	\$126,484.64	15	\$258,703.39
Stahær	4	\$48,598.47	6	\$38,929.64	10	\$87,528.11
Stanton	1	\$5,000.00			1	\$5,000.00
Starin	2	\$57,233.25	4	\$77,257.57	6	\$134,490.82
Stermitz			1	\$2,737.50	1	\$2,737.50
Stufft			2	\$58,332.00	2	\$58,332.00
Stusek	1	\$2,250.00			1	\$2,250.00

2/11/97
28 3/5

WORKERS' COMPENSATION REFORM LEGISLATION

MAJOR REFORM EFFORTS:

- 1.) Advisory Council Proposals -- SB-330
- 2.) Governor's Requested Reform -- SB-315

A. Proposals which are common to both bills

Bill	Sec.	No.'s
SB-330		SB-315

- | | | |
|----|----|---|
| 3 | 17 | 1.) Definitions: surviving spouse; unmarried child under age 22; Board of Rehab. Certification; benefit categories; T.T.; P.T.; and PP. |
| 6 | 22 | 2.) Filing fraudulent claims--penalties attached. |
| 7 | 25 | 3.) Covered and Exempt Employments. |
| 9 | 26 | 4.) Liability of insurers; "medically probable" rather than "medically possible"; traveling employees; intoxicated employees. |
| 10 | 29 | 5.) Uninsured Employers Fund: Put on cash basis; pay wage compensation before medical costs. |
| 11 | 31 | 6.) Attorney Fees on denied claims later found compensable; insurer pays fees if found to be unreasonable, not bad faith. |
| 15 | 35 | 7.) Hiring Preference: No firing for filing a workers' compensation claim; two-year preference with same employer. |
| 17 | 37 | 8.) Cost of Living Adjustment: Adds a 3% maximum increment each year for ten (10) years after a two-year-waiting period. |
| 18 | 38 | 9.) Schedule of Injuries deleted. |
| 21 | 43 | 10.) Incarcerated Claimants: Not entitled to wage compensation benefits. |
| 22 | 44 | 11.) Death Benefits: Change lifetime spouse benefits to ten (10) years; cease upon remarriage; unmarried children from 25 to 22, if in school, or apprenticeship program. |

3
2/14/87
3/3/87

B. Proposals exclusive to the Governor's Bill -- SB-315

Sec. No.s
SB-315

- | | |
|---------------------|---|
| 1 | 1.) Declaration of Public Policy. |
| 2-16, 67,
68, 74 | 2.) Board of Industrial Insurance to replace Workers' Compensation Court. |
| 17 | 3.) Definitions: Maximum healing, injury, and wages. |
| 27 | 4.) Subrogation, insurer entitled to full rights against any settlement. |
| 36-38, 40 | 5.) Two-year freeze on: Benefit levels--wage compensation and medical services. |
| 38 | 6.) Permanent Partial Benefits: Give lump sum impairment awards at worker's choice, maximum benefits at 500 (weeks); eliminate future earning capacity criteria; pay wage supplement difference between pre- and post- injury earnings; introduce job pool concept. |
| 37 | 7.) Permanent Total Benefits: Job pool concept to replace normal labor market; exhaust all rehabilitation possibilities before considered as total disability. |
| 39 | 8.) Establish medical impairment panels. |
| 42 | 9.) Clarify benefit eligibility upon qualification for Social Security retirement. |
| 47 | 10.) Limit lump sums to \$20,000 on permanent total for necessities of life; self-employment after rehab process completed; needs arising subsequent to accident; injured agrees to provide follow up information. |
| 54 | 11.) Establish rehabilitation panels to emphasize a return-to-work program rather than a vocational training concept. |
| 59 | 12.) Structure rehab benefits to encourage return to work. |
| 61 | 13.) Add auxiliary benefits for travel, relocation, job search, and on-the-job training. |
| 17 | 14.) Temporary total benefits cease at maximum healing. |
| 60 | 15.) Paid rehabilitation benefits during retraining at partial rate. |
| 23 | 16.) Mediation of disputes. |

I am Maggie Bullock, the Administrator of the vocational rehabilitation programs in the Department of Social and Rehabilitation Services and am here today to testify in support of SB 315.

Since 1961 the vocational rehabilitation program has been a recipient of 1% of the benefits paid out to Workers Comp claimants the prior year. This assessment becomes for Montana's industrially injured worker a 20% state match dollar for the 80% federal dollars utilized to rehabilitate that industrially injured worker. Until 1984 that 1% assessment was never more than \$275,000 a year. In 1984, due to the burgeoning case law decisions, that amount climbed to \$586,000 and jumped to \$666,000 in 1986, an acceleration reflecting the increase in benefits paid to Montana's industrially injured workers.

This increase in compensation paid has been accompanied by an increase in the numbers of industrially injured workers served by vocational rehabilitation from 758 in 1981 to almost 1800 served in 1986.

In the following ways the rehabilitation sections of SB 315 will effect the cost containment, simplification and claimant/client needs of all parties interested in this legislation because they are interested in repairing and updating and maintaining a system that is critical to all workers in Montana.

- 1) The early intervention provided for in this bill will absolutely expedite the injured worker's chance of returning to work.
- 2) The coordinated service delivery system provided for in this bill will be far more comprehensible and accessible than the concurrent dual system (that is public and private rehab) currently in place. The current rehabilitation system is frankly and understandably incomprehensible to the injured worker.
- 3) Because SB 315 proposes a time structured system, the resolution of conflict, especially among the injured worker and his/her respective case manager begins necessarily at an early stage. The worker and legal representative will have a single source to approach for information and direction.
- 4) The injured worker will not be required to choose between two rehab case managers, each promising a superior service.

Industrially injured workers are confronted with an array of situations that they do not begin to understand. Montana's established system for them is laden with anxiety and stress that is magnified by the worker's own inability to cope with all the feelings that accompany onset of a disability....feelings of loss, feelings of grief, feelings of inadequacy. Any disability that leaves a worker incapable of returning to work immediately

SENATE LABOR & EMPLOYMENT
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CR 312

is always accompanied by a host of psychological, sociological, financial and family problems. Unemployment for any of us typically causes a loss of status, a feeling of isolation, much anger.

Long periods of unemployment lead to dependency on government "giveaway" programs which can become a disincentive to return to work. It's not uncommon to see an injured worker's daytime hours totally devoted to doctor's appointments, therapy sessions, visits with the insurance adjuster, visits to the unemployment office, visits to other government service offices. That former worker can become so busy with this kind of activity that by the time he/she gets to thinking about vocational rehabilitation, they are almost out of the energy necessary to cope with what should be the most important part of their recovery process.

While the four points I made earlier are very critical to the operation of a workers comp rehab system that is clearly defined for all parties involved in the rehabilitation of the injured worker, numbers 2, 3 and 4 are essential to removing the duplication in costs and time that currently exist periodically when both private and public rehab are involved in serving one injured worker at the same time. SB 330 does not provide for any means to eliminate this duplication problem.

SENATE LABOR & EMPLOYMENT
SENATE NO. 41
DATE 2/14/87
BILL NO. SB 330

BOARD OF COUNTY COMMISSIONERS

LINCOLN COUNTY
STATE OF MONTANA

DISTRICT NO. 1, LIBBY
JIM R. MOREY

DISTRICT NO. 2, TROY
LAWRENCE A. (LARRY) DOLEZAL

DISTRICT NO. 3, EUREKA
NOEL E. WILLIAMS

CLERK OF THE BOARD AND COUNTY RECORDER, JANET B. F. SIEGEL
512 CALIFORNIA AVENUE
LIBBY, MONTANA 59923

February 13, 1987

Bruce Vincent, Chairman
WCAC
512 Mineral Avenue
Libby, MT 59923

Dear Mr. Vincent:

We would like to express to you our support of SB315, Governor Schwinden's bill to reform the Worker's Compensation Administration.

As we understand the situation, we are faced with three choices: 1) the current system, which is now heading for impending death by drowning in red ink, 2) the bill put together by Governor Schwinden's Advisory Council, which most likely would eventually end up with the same fate, or 3) SB315, which will at least give us something workable to deal with that has the best chance of gradually putting the system back into the black.

It appears that if this bill is amended, it could conceivably render it powerless to bring about the changes drastically needed to rescue our system. We support this bill in its unamended form, knowing that there are some areas that we would like to see amended in the future. We will be following these areas with the WCAC (Worker's Compensation Action Committee), as well as other local concerned citizens, to see that a substantial follow-up is made in the next legislative session to address these areas of concern.

The economy of Northwestern Montana is heavily dependent on the timber industry. A healthy Worker's Compensation Administration is vital to the survival of our timber industry. We appreciate your support of SB315 as the most realistic option at this time to help to alleviate our crisis situation.

Yours very truly,

BOARD OF LINCOLN COUNTY COMMISSIONERS

Noel E. Williams Jr.
NOEL E. WILLIAMS, Chairman

Jim R. Morey
JIM R. MOREY, Member

L.A. Dolezal
LAWRENCE A. (LARRY) DOLEZAL, Member

SENATE LABOR & EMPLOYMENT
[5]
DATE 2/14/87
BILL NO. SB 315

LIBBY AREA CHAMBER OF COMMERCE

P.O. Box 704, Libby, MT 59923

Telephone 406-293-3832

CB Radio Channel 5

Workman's Comp Action Committee
c/o Capitol Station
Helena, MT. 59620

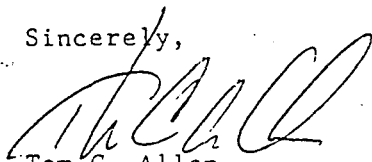
Workman's Comp Action Committee:

The Libby Area Chamber of Commerce membership has voted full support for the Governor's Bill, Senate Bill 315.

We believe this bill is necessary to the economic future of Libby and Montana.

The Libby Area Chamber of Commerce would like to thank you for your support on Senate Bill 315.

Sincerely,



Tom C. Allen
President
Libby Area Chamber of Commerce

cc Governor Ted Schwinden
Rep. Paula Darko
Senator Eleanor Vaughn
Rep. Paul Rapp-Svrcek
Rep. Mary Lou Peterson
Chairman of Business and Labor House
Chairman of Business and Industry-Senate

SENATE LABOR & EMPLOYMENT

5

DATE 2/14/87

FILE NO. SB 315

Northwest Energy Employment
& Development Inc.

P.O. Box 1158

Ltbee MT. 59923

SENATE EMPLOYMENT

EXN 5

DATE 2/14/87

BILL NO. SB 315

DEAR SIRs.

We of the N.E.E.D. orig. wish
to go on record AT this time,
in support of Senate Bill 315.

We of N.E.E.D. feel THAT the
present WORKMAN'S Comp system
in MONTANA, has gotten out of
control AND the injured workers
of MONTANA ARE being neglected
we believe the injured worker
needs to be taken care of
properly, when injured on the job AND
given the fullest protection.

Yet the cost to maintain this
program to the employer should
NOT be so great, AS To force
them out of business.

We feel THAT Senate Bill 315
marks a turning point for the
system THAT was initiated to protect
both the worker the worker AND employ
during times of injury and disability,

This bill will improve the Administration
and do away the need for third party

E. H. Oftedal & Sons, Inc.

CONTRACTORS

P.O. Box 400 • Phone (406) 232-5911
MILES CITY, MONTANA 59301

February 10, 1987

Senate Labor Committee
Montana State Senate
Helena, Mt. 59620

Dear Members of the Committee:

E. H. Oftedal & Sons, Inc. is a heavy and highway construction company with headquarters in Miles City, Montana. However, we are engaged in construction work throughout Montana and Wyoming.

During 1986 our company paid out \$ 1,303,038.00 in salaries to 220 employees working in the two state region. There was a noticable difference in the Workers' Compensation rates charged by the individual states for a similar type of work. The base premium rate charged by Montana State Compensation was 7.5%. In Wyoming the rate was only 1.75%.

Based on \$ 1,303,038.00 in annual salaries, the annual premium would have been \$ 97,727.85 in Montana, but only \$ 22,803.17 in Wyoming. In other words, Montana charges over four times as much as does the state of Wyoming for Workers' Compensation insurance coverage.

Based on the above facts, it is difficult to understand why Montana Workers' Compensation rates are so much higher than neighboring Wyoming. The insurance benefits to the employees in Montana could possibly be more, but it is doubtful that Montana employees would receive more than four times the benefits that they could receive in Wyoming if they were injured on the job.

Investigation into the program structure of Wyoming Workers' Compensation would certainly be in order at this time if Montana is to come up with more realistic rates.

Yours very truly,

W. T. Oftedal

W. T. Oftedal
President

WTO/hk

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 6

DATE 2/14/87

BILL NO. SB 32

FALLS CONSTRUCTION COMPANY

CONTRACTORS — ENGINEERS

10TH STREET AND RIVER DRIVE NORTH

PHONE 727-5300

GREAT FALLS, MONTANA 59401



Skill, Integrity
and Responsibility

February 11, 1987

Senate Labor Committee
Montana State Senate
State Capitol
Helena, Montana 59620

Re: Workers' Compensation Legislation

Dear Members of The Committee:

Our Firm has been in the heavy construction industry for forty years in the State of Montana, and we have had ringside seats to watch the administration of Workers Compensation. The trend has definitely shifted from reasonable compensation to abuse and even the absurd.

Although we do not provide names and dates, for obvious reasons, please consider the following abuses of which we have firsthand knowledge:

1. A worker turned in a claim for a strained back a week after he left our employment (due to lack of work). He said he had hurt his back on a Thursday, however, he worked all day Friday without any complaint to management or his fellow workers. Workers' Compensation Division investigated the claim but was unable to overturn it because they could not prove the claim was false. (Anymore than the claimant could prove the claim was true.)
2. In 1984 a worker turned in a claim three weeks after he left our employment (due to lack of work). He said he "thought" he had ruptured himself while he was in our employ. We questioned the incident on the report form and never heard any more about it until three months ago, when we were told he was still collecting disability payments. The first operation, which was charged to our experience account, had failed, according to the claims adjuster, due to a faulty medical procedure. Two years later, the claimant had the surgery again and has claimed disability virtually the entire time. 6
The entire episode was charged to our account.

DATE 2/14/87
FILE NO. 50 3/5

RECEIVED

FEB 12 1987

MONTANA CONTRACTORS
ASSOCIATION, INC.

1411

3. I was informed of another case where a settlement was made on a dental claim related to a back injury. The claimant said that the back injury caused such a depression that he quit brushing his teeth and hence the dental problem. Absurd.

We request that your Committee adopt legislation that will give the claims adjusters some tools to work with that will allow the to reduce the number of abusive claims.

Yours truly,

GFH:djw

by _____
Guy F. Huestis, Vice President
FALLS CONSTRUCTION COMPANY

cc: Senator Gene Thayer

MT. Contractors' Association, Inc.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 62
DATE 3-1-87
BILL NO. 313 3/5

MONTANA MOTOR CARRIERS ASSOCIATION INC.



B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT
501 NORTH SANDERS
P.O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

February 14, 1987

TO : Montana Senate Labor and Employment Relations Committee,
Senator J.D. Lynch, Chairman.

From : Robert N. Holding, representing Montana Motor Carriers
Association, Helena, Montana.

RE : SB 315

The Montana Motor Carriers Association has some 325 carrier members and 125 supplier members. All of whom are employers and the carriers range in size from a one-truck operation to medium size companies operating fleets of trucks up to 400 plus in numbers. 95% of our Montana based trucking companies operate in interstate commerce under ICC authority in several states, some in all 48 states. All are in severe competition with trucking companies in all 48 states and the costs of doing business is a prime problem.

Montana Workers' Compensation premiums for truckmen increased 50% two years ago and were just increased an additional 25% hike..... effective January 1, 1987. Prior to the rate increase, a truck driver earning \$30,000 a year costs \$3,400 a year for workers' compensation in Montana, but only \$832 in North Dakota, \$2,100 in Idaho, and \$1,800 in Utah, for example. The latest increase adds an additional \$850 per year for a total of \$4,440 in Montana. It's interesting to note that the recent increase is more than North Dakota's total rate.

The MMCA membership was polled on December 8, 1986, asking for reaction to the 25% Workers' Compensation rate increase for truckmen from \$11.8 to \$14.80 per \$100 of wages. Some 51% of carriers responding indicate that they were considering plans to move operations out of Montana. (The survey is attached herewith)

In summary, we believe that SB 315 will help to bring costs of doing business down in Montana by reducing costs of Workers' Compensation coverage and streamlining the whole process to make it more efficient and workable. Accordingly, MMCA supports the passage of SB 315.

SENATE LABOR & EMPLOYMENT

FILE

DATE 2/14/87

BILL NO. SB 315

MEMBER



REPRESENTING THE TRUCKING INDUSTRY IN MONTANA

1413

7219 Truckmen Rate
Workers' Compensation Costs State Fund Rates

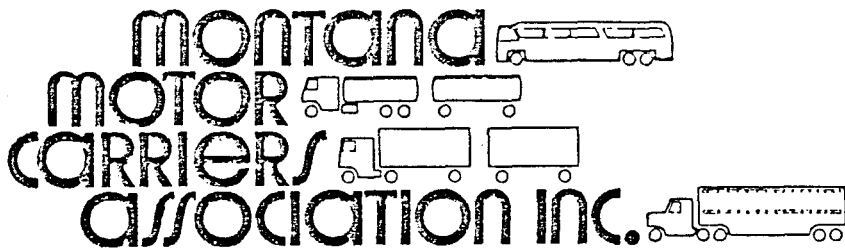
	Max Base	Old Rates Per \$100	Rates Per \$100 Effective 1/1/87	\$20,000	\$25,000	\$3
Montana	0	11.86	14.80	Old \$2,372 New \$2,960	Old \$2,965 New \$3,700	Old New
North Dakota	\$3600	10.80	10.80	\$389	\$389	\$3
Utah	0	6.24	6.92	Old 1248 New 1384	Old 1560 New 1730	Old New
Idaho	0	10.40	15.50	Old 2,080 New 3,100	Old 2,600 New 3,875	Old New
Wyoming	0	5.00	5.00	\$1,000	\$1,250	\$1,250

Montana Workers' Compensation Costs for
7219 Truckmen as compared to surrounding states:

Montana's costs
as a percentage

<u>Wages</u>	<u>North Dakota</u>	<u>Utah</u>	<u>Wyoming</u>	<u>Idaho</u>
20,000	Old +510% New +660%	+90% +114%	+137% +196%	+14% -4.7%
25,000	Old +662% New +851%	+90% +114%	+137% +196%	+14% -4.7%
30,000	Old +815% New +1041%	+90% +114%	+137% +196%	+14% -4.7%

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 2/1/87
BY OB 3/5



B.G. HAVDAHL, EXECUTIVE VICE PRESIDENT
501 NORTH SANDERS
P.O. BOX 1714, HELENA, MONTANA 59624
TELEPHONE: AREA CODE 406 442-6600

January 5, 1987

TO : MMCA Executive Committee

FROM: B. G. HAVDAHL, Executive Vice President

RE : Responses to Workers' Compensation Rate Increase Survey

The MMCA membership was polled on December 8, 1986, asking for reaction to the 25% Workers' Compensation rate increase for truckmen from \$11.86 to \$14.80 per \$100 of wages.

The following is a recap of the poll and an estimation of power units involved by the respective carriers:

- 1) Number of carriers responding.....55
- 2) Total estimated power units involved.....2379
- 3) Number of carriers indicating plans to move out of Montana or move drivers under the employ of an out-of-state corporation.....29 (52%)
 - A) Number of power units involved (3).....1338 (56%)
- 4) Number of carriers indicating no plans to move.....24 (43%)
 - A) Number of power units involved (4).....347 (14%)
- 5) One carrier with 325 power units does not pay or require independent contractors to be insured and another carrier with 369 power units implied the possible consideration of moving for a total of 694 power units.
- 6) Number of suppliers responding.....6
- 7) Number of suppliers indicating their plans to relocate outside of Montana.....3

BGH:ap

SENATE HOUSE

EX. 7
2/14/87
5/5 3/5



1415



**GREAT
FALLS AREA
CHAMBER OF COMMERCE**

P.O. BOX 2127
926 CENTRAL AVENUE
GREAT FALLS, MONTANA 59403
(406) 761-4434

TO: Cascade County Delegation

FROM: Roger W. Young, President

SUBJECT: Workers Compensation Reform

The Great Falls Area Chamber of Commerce is very concerned about the need for comprehensive reform of Montana's Worker's Compensation Program. Soaring rates and liberal benefits are a serious negative in the state's overall business climate, preventing the attraction of new business and industry and, in fact, chasing some already here out of the state.

The Great Falls Area Chamber of Commerce supports reform which has an overall goal of reducing Montana's Worker's Compensation rates, which in some categories are now among the highest in the nation. This must be done while still maintaining a system that is fair to injured workers.

We generally support changes in the Worker's Compensation program which have been recommended by the Montana Chamber of Commerce and embodied in SB 315

We recommend that the legislature:

A) Limit the fees allowable on legal fees for claimants.

The amount of litigation and attorney involvement over benefits in the worker's compensation system is a major concern to employers. Attorneys are involved in over 30% of the worker's compensation cases in Montana, the highest percentage of attorney involvement of any state in the nation.

The current attorney compensation rules provide incentives for more litigation; they reward controversy. For example, attorneys receive 25% of the claimants entitlements if there is no litigation, 33% if the case is appealed and ordered by the Worker's Compensation Courts and 40% if the case is heard and awarded by the Supreme Court.

B) Reform the Worker's Compensation Act which currently allows bi-weekly payments to be converted into lump-sum payments.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 8

DATE 2/14/97

FILE NO. 58 2

1416

The amount and frequency of compromise settlements have dramatically increased in recent years and are one of the biggest factors responsible for the projected \$81 million deficit of the worker's compensation program. Serious amendments need to be offered to reduce and limit the amount of worker's compensation lump-sum payments.

C) Support the recommendation to eliminate the Worker's Compensation Court as first step in the resolution of claims.

Montana is only one of two states that has a Worker's Compensation Court as a first step to resolve controversy. To replace the Court it is suggested that an administrative review panel be created. This panel would attempt to resolve and negotiate disputed cases before they reach litigation.

D) Amend the "liberal construction" clause in the present Worker's Compensation Act.

The present law is written to mean that whenever there is a settlement in question between a claimant and defendant, the Act shall be "liberally construed" in favor of the claimant.

It is suggested the "liberal construction" clause be amended so disputed cases are not awarded in favor of any party.

E) Seek a stricter definition of what constitutes a compensable act claim.

Under the present law there is uncertainty as to under what circumstances employees are working within the course and scope of their employment. It is recommended the current statute needs to be more clearly defined when employers are not liable for employees who suffer a compensable injury or death while traveling on non-business related activities. Furthermore, the statute needs to explain that an employee who suffers injury as a result of being under the influence of intoxicating beverages or drugs is not entitled to benefits.

The Great Falls Area Chamber of Commerce also encourages that Worker's Compensation reform also incorporate provisions which will provide incentives and thereby reward safe employers and those with effective accident prevention programs. Unsafe business operations may rightfully deserve to be penalized through an experience rated classification system.

SENATE LABOR & EMPLOYMENT

ENRINT NO. 8

DATE 2/14/27

BILL NO. 58 3/4

TESTIMONY OF LLOYD DONEY IN FAVOR OF SB 315

Mr. Chariman - Members of the Committee

My name is Lloyd Doney and I am the personnel agent for ASARCO Troy Unit. I am in charge of administrating the Worker's Compensation program. I have been at Troy for one (1) year.

Before my move to Troy I held the same job for ASARCO in the State of Idaho

I am here to tell you today that last year - 1986 - I daho REFUNDED \$4.2 million to its workers compensation policyholders.

It did that through a program that can actually provide weekly benefits GREATER than those paid in Montana.

The Idaho system is simple, clean and effective. It supports the wor needs - it does not support the legal system. Attorney involvement in Idaho is minimized. Benefits and expectation of benefits are defined.

It is very apparent to me the Montana system is in need of major reform. SB 315 is a major step in the right direction.

I support the creation of a board because I have seen it work.

I think the Board will cut litigation and foster employer/employee relations. Once attorneys are involved the system is

SENATE LABOR & EMPLOYMENT
JAN 10 1987

adversarial and this diminishes the chances of re-integrating the worker back into the workplace.

It is apparent that SB 330 is a bandaid approach to reform and does not provide the real reform that is necessary.

I am not opposed to compensating an injured worker. But the system must be fair to both the worker and the employer. Under the present law in Montana it is not.

The system must provide impetus to return the injured worker to the workplace and not serve as a retirement system to those who are able - but not motivated to return to the job market.

For these reasons I support SB 315 and request its passage without amendment.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 2/14/87
BILL NO. SB 315
1219



415 Albert St. • P.O. Box 20598
Billings, Montana 59104
Phone (406) 252-2161

Feb. 14, 1987

Senate Labor Committee

Re: Workers' Compensation

I support Senate Bill 315 for change in the Workers' Compensation law. Not that it's that good, but it is the best I've seen to date. It does start to address the problems; BENEFITS and the fact that 80% of the claims are litigated.

The simple solution is to completely throw out the current law and adopt South Dakota's law. It is a good law at a reasonable cost. We have a plant in Sioux Falls and one in Billings. Billings' shop rate is \$18 per \$100 wages while Sioux Falls pays \$4.34 for the same job.

The rate for steel erection over two stories is up to \$71.82 per \$100. I have talked to several Montana steel erectors and all are in the process of leaving the state as are loggers and truckers. This is fact!

If Workers' Compensation rates increase we may be forced to leave Montana. We are not a big deal with only thirty-seven employees, but add twenty or more small firms like mine to the list and gentlemen you have a BIG problem!

Senate Bill 315 is a step in the right direction. At least it offers some relief. To do nothing is to sign the death warrant for hundreds of Montana companies like mine and thousands of jobs.

Sincerely yours,

Don De Jarnett
General Manager
Montana Steel

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10
DATE 2/14/87
BILL NO. SB 315

deceit, or some other equally good reason prevented a written notice. compensation will be paid unless written notice is given within thirty (30) days unless reasonable excuse is shown to the Department of Labor.

Employer's Record Of Injury

Any employer coming under the provisions of this Act shall keep a record of all injuries, fatal or otherwise, sustained by his employees in the course of their employment. The record shall be completed within ten days, not counting Sundays and legal holidays, after the employer has knowledge of the occurrence of an injury. The record shall be on a form approved by the Department of Labor. The employer shall preserve the record for a period of at least four years from the date of injury. The record shall be signed by the employer and copy given to the injured employee.

Employer Reporting Requirements

Within ten days, not counting Sundays and legal holidays, after any employer coming under the provisions of this Act has knowledge of the occurrence of an injury which requires medical treatment other than first aid or which incapacitates the employee for a period of at least seven calendar days, a report shall be filed, in writing, by the employer to:

the Department of Labor, if the employer is self-insured under § 62-5-2 or § 62-5-3; or the employer's insurer, when the employer has insured his liability under § 62-5-2 or § 62-5-3.

The insurer or, if the employer is self-insured, the employer shall make an investigation of the claim and notify the injured employee and the Department of Labor in writing within (30) days if denying liability for the reported injury in whole or in part. This period may be extended up to sixty (60) additional days if approved by the Department of Labor. The insurer or employer who denies liability in whole or in part, must state the reasons and notify the claimant of the right to a hearing.

If a claim is denied, the injured employee has two (2) weeks from the date of notification from the insurer or employer to file a Petition for Hearing with the Department of Labor.

What If There Is No Insurance Or Self-Insurance?

If an employer fails to provide worker's compensation coverage under the provisions of the South Dakota Worker's Compensation Act, an injured employee or dependents of a deceased employee may proceed against the employer in an action at law to recover

damages for the personal injury or death or may elect to proceed against the employer in circuit court under the provisions of the Worker's Compensation Act as if the employer elected to operate thereunder. The measure of benefits for the employee shall be all medical expenses plus twice the amount of disability or death compensation allowed under the Worker's Compensation Act.

VIII. Administration

The Worker's Compensation Act is administered by the Division of Labor and Management of the Department of Labor. All work-related injuries and occupational diseases which require medical treatment other than minor first aid or which incapacitate the employee for a period of more than seven (7) calendar days must be reported to the division. In addition the insurer or self-insurer must file the following:

1. An agreement as to compensation for temporary total or temporary partial disability (Form DOL-IM-110-1/80);
2. A doctor's preliminary report (Form DOL-IM-101-1/80);
3. A doctor's final report (Form DOL-IM-105-1/80);
4. Quarterly reports of compensation paid (Form DOL-IM-107-1/80);
5. An agreement as to compensation for permanent partial or permanent total disability (Form DOL-IM-111-1/80).

For more information, write the Division of Labor and Management, Kneip Building, 700 Illinois N., Pierre, S.D. 57501-2277, or telephone 1-605-773-3681. The office is open between 8:00 a.m. and 5:00 p.m., Monday through Friday. This pamphlet may be reproduced for further distribution.

Department of Labor
DIVISION OF LABOR & MANAGEMENT
700 Illinois North, Kneip Building
Pierre, South Dakota 57501-2277



SOUTH DAKOTA Worker's Compensation Act

July 1, 1986-June 30, 1987

South Dakota Department of Labor
Division of Labor & Management

HOWALT-MCDOWELL
INSURANCE, INC.

225 So. Minnesota
P.O. Box 986
SIOUX FALLS, S.D. 57101-0986

TO: SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/14/87
BILL NO. 34 215



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• **nonprofit status** means that the organization is not owned by any individual or group of individuals and is not operated for the private in-
come of any individual.

APPENDIX I

If the only survivors are children, the child or children shall receive the same weekly rate of compensation until the age of eighteen, or until twenty-two if a full-time student, or for life if incapable of self-support.

.....50

The employer or insurer also has an obligation to pay up to three thousand (\$3,000) dollars in burial expenses plus the cost of transporting the body to a funeral home. The employer or insurer also has an obligation to pay up to three thousand (\$3,000) dollars in burial expenses plus the cost of transporting the body to a funeral home. The employer or insurer also has an obligation to pay up to three thousand (\$3,000) dollars in burial expenses plus the cost of transporting the body to a funeral home.

D. Rate of Compensation. As of July 1, 1960, the compensation is two thirds (2/3) of the employee's average weekly wage up to a maximum of \$262 week. The minimum compensation is \$131 and the employee's average weekly wage is less than

\$131. In that instance, the amount of the employer's average weekly wage is paid as compensation. The rate is effective through June 30, 1987. The foregoing amounts are used to calculate ten

ability, rehabilitation, and death benefits.

IV. How To Obtain Benefits

immediately upon occurrence of an injury (or as practicable, an injured employee (or a representative) shall give or cause to be given a written notice to the employer. The employee shall not be

may have accrued prior to the time of giving notice, unless it can be shown that:

- 1) the employer, the employer's agent, or representative had knowledge of the injury or death;
- 2) the person required to give such notice had prevented from doing so because of physical or mental incapacity, or
- 3) a third person prevented knowledge by fraud.

Most employees obtain coverage by purchasing an insurance policy; however, some employers pay benefits from their own funds. These employers, called "self-insurers," must prove that they are financially able to pay full benefits for any injuries to their employees. Self-insurers are certified and regulated by the Department of Labor and the Division of Insurance, Department of Commerce.

Workers' compensation protects both employers and employees. Each covered employer has a right to benefit if injured on the job. In return, he or she forfeits the right to sue the employer for job-related injuries.

II. Who Is Covered?

The South Dakota Worker's Compensation Act requires all employers to provide coverage for their employees. The Act:

1. Domestic servants, unless working for an employer for more than 20 hours in any calendar week and for more than six weeks in any 13 week period;
2. Farm or agricultural laborers;
3. One whose employment is not in the usual course of the trade, business, occupation, or profession of the employer (independent contractor); and
4. Certain elected officials of the state or any subdivision of state government.

1. Domestic servants, unless working for an employer more than 20 hours in any calendar week and for more than six weeks in any 15 week period;
2. Farm or agricultural laborers;
3. One whose employment is not in the usual course of the trade, business, occupation, or profession of the employer (independent contractor); and
4. Certain elected officials of the state or any subdivision of state government.

- Domestic servants, unless working for an employer for more than 20 hours in any calendar week and for more than six weeks in any 13 week period;
- Farm or agricultural laborers;
- Whose employment is not in the usual course of the trade, business, occupation, or profession of the employer (independent contractor) and
- Certain officials of the state or any subdivision of state government.

STATEMENT REGARDING SENATE BILLS 315 AND 330

Mr. Chairman and members of the Committee, I am Fred Van Valkenburg, State Senator from District 30 in Missoula; and I am here today in support of Senate Bill 330.

As you know, Governor Ted Schwinden appointed a twenty-member Advisory Council in January of 1985 to review and evaluate the workers' compensation system in Montana and to submit its recommendations to the 1987 Legislature regarding proposed improvements in the system. The charge by the Governor was to provide a system that would be "people-sensitive as well as cost-conscious". The Advisory Council diligently worked for a period of two years to review all aspects of the Montana workers' compensation system. The Council was made up of representatives from all interest groups who have vital concerns about a viable, fair, and cost effective system to compensate workers for on-the-job injuries.

The Council, with near unanimity, submitted its report to the Governor, and it suggested several proposed changes for legislative consideration. I believe the proposed changes would provide for the needed reduction in costs to employers and yet maintain a system to fairly and justly provide protection to those injured while at work.

The concessions made by those representing workers injured on the job, and that would provide for a reduction in benefits and streamlining the system, and thus premium costs, are as follows:

1. Reducing permanent partial benefits for whole-body injuries from a maximum of 500 weeks to 350 weeks; and deleting the schedule of injuries so that all workers could be treated equally in relation to permanent disabilities.

2. Reducing death benefit payments from lifetime to payments for a maximum of either 500 weeks or until the youngest child reaches age 18, or age 22 if in an accredited school.

3. Strengthening the proof needed to establish injuries that involve the aggravation of a preexisting condition so as to preclude injuries wherein only medical possibilities are given as evidence for such injuries. This would reduce substantially the potential compensability of injuries, especially in the area of heart attacks, stroke, and minor back strains.

4. Limiting the assessment of attorney fees against insurers to only those in situations wherein it is determined that an insurer was unreasonable in its adjustment of a case.

5. Reducing temporary total disability benefits so that such benefits will not begin until the seventh day of wage loss after an injury. Currently, benefit payments are made from the first date of wage loss.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
41427-1

6. Strengthening the powers of the Workers' Compensation Court, and restricting access to the Court to cases in which a good faith effort has been made to resolve the dispute between a claimant and an insurer.

7. Clarifying and simplifying the language in the law in the different benefit payment categories.

8. Streamlining the system whereby lump sum payments and agreements between a claimant and an insurer are processed.

9. Clarifying the current rehabilitation law and recognizing the role of private rehabilitation vendors.

In addition, the Council bill would provide for a small cost-of-living adjustment for continuing total disability cases, and would provide for job protection to workers who suffer on-the-job injuries.

It is my opinion that the major proposed changes would result in benefit reductions in those areas in which such reductions can take place without substantially prejudicing the rights of injured workers, and will provide the needed streamlining for the workers' compensation system.

It should be noted that the Advisory Council recommended the addition of one workers' compensation judge. I believe that such a provision could be deleted and that the one judge, along with the judge's support staff, could adequately handle the workload, especially in light of the other recommendations set forth in the Council bill regarding the requirements that must be met before a petition can be filed with the Court.

I understand that the Division of Workers' Compensation disagrees substantially with a number of the major recommendations of the Advisory Council. It has drafted and submitted its own bill to the Legislature for consideration. I have reviewed the Division's bill, and although it does adopt some of the recommendations of the Council in the area of benefit reductions, it also goes far beyond what the Council felt was needed to adjust the workers' compensation system to make it cost effective. My major concerns with the Division's proposals are as follows:

1. The Division's bill would abolish the Workers' Compensation Court and substitute the Court with Department hearing examiners, with an appeal to a three-member board, an appeal then to a District Court, and then to the Supreme Court. This would greatly increase the complexity of the review process and would not provide for an impartial review of disputes, especially between a claimant and the State Compensation Insurance Fund. In effect, a claimant would have to appeal back to the same department involved in the dispute, and this simply does not provide for a fair and adequate dispute resolution system for injured workers.

2. The Division would completely change the current definition of 'injury', and substantially restrict compensation for injuries suffered on the job. The proposed law would be contrary to the major trend in recent years in all jurisdictions regarding coverage for on-the-job injuries, in that it would prevent benefit payments for injuries suffered through repetitive trauma or by unusual strain (those conditions involving a worker who is doing his usual work in his usual manner, and suffers internal or external physical harm). It should be pointed out that such a restrictive definition of injury may very well result in an elimination of the exclusive remedy provisions of the workers' compensation law. This would allow injured workers to file civil actions in District Court against employers who suffer on-the-job injuries when such injuries are not covered by workers' compensation insurance. This would substantially increase the exposure for employers with resulting increase in liability insurance premiums.

3. Contrary to the Advisory Council recommendations that the subrogation laws be left intact, the Division's bill would provide for subrogation against any third party recovery, even though an injured worker was not fully compensated for his injuries.

4. The Division, contrary to the recommendations of the Advisory Council, would not allow a recovery of costs to injured workers who are successful in the hearing process.

5. The Division's proposal would completely rewrite the permanent partial benefit area, substantially revising the system for the payment of benefits to injured workers. It is submitted that the proposal suggested by the Division would provide a protracted and complex system whereby cases could never be resolved, and it would provide little or no cost savings in the area of permanent partial benefits.

6. The Division would restrict the settlement of cases to a very limited set of circumstances, contrary to proper claims management systems whereby cases are adjusted and resolved. The Division's proposal would leave cases open almost indefinitely, and such a system is not only detrimental to injured workers, but also to insurers as well as the operations of the Division.

7. The Division's bill would provide an extremely complex system for rehabilitation; and in many ways would result in unfairness in the evaluation of potential viable rehabilitation programs for injured workers.

I strongly urge the Committee to carefully evaluate both bills and the ramifications of the varying proposals in the two bills. It is my belief that the Advisory Council's bill is certainly the better proposal and should be the format from which needed change can take place. Possibly some adjustments can be made between the two proposals with amendments to change the Advisory Council's bill in limited areas. I would be happy to work with the Committee in an effort to resolve the areas of dispute.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 17



UNIVERSITY
OF MONTANA

School of Law, University of Montana, Missoula, Montana 59812

(406) 243-4311

February 13, 1987

Senator J.D. Lynch
Senate Labor & Employment Relations Committee
State Capitol, Room 325
Helena, MT 59101

Dear Senator Lynch:

Thank you for this opportunity to appear before the Senate Labor Committee. I will be most happy to answer any questions regarding my views on the various proposals in the legislature regarding workers' compensation.

I have prepared some general written comments for the committee which will be given to the Committee Secretary.

Sincerely,

David J. Patterson

DAVID J. PATTERSON
Professor of Law

DJP:cw

cc: Senator Haffey
Senator Blaylock
Senator Manning
Senator Thayer
Senator Gage
Senator Keating
Senator Galt

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 12
DATE 2/15/87
BILL NO. 233

TO: Senator John Lynch
FROM: David J. Patterson
Professor of Law

COMMENTS ON DISPUTE RESOLUTION:
THE WORKERS' COMPENSATION COURT

Introduction:

My name is David J. Patterson; I am Professor of Law at the University of Montana Law School. I have worked in Workers' Compensation Law for 21 years. The past 19 years I have taught Workers' Compensation at the Law School in Missoula. Periodically I have served as a Hearing Examiner, a function that involves deciding disputed claims for compensation. Presently, and for many years, I have served as Chairman of the State Bar Ethics Committee. I have prepared a casebook on Workers' Compensation and have read and studied almost every significant case decided since the Act's inception in 1915. I have been involved with the system when disputes were theoretically decided by the old Industrial Accident Board, but in reality decided by the Administration. I have witnessed and consulted about the inherent conflict of interest problems and scandal that resulted from the previous system. Conflict of interest because decision making must be separate and distinct from any interest in outcome; scandal because bias leads to abuse.

Scope:

My testimony is intended to be limited to the dispute

SENATE LABOR & EMPLOYMENT

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EXHIBIT NO. 12

DATE 12/14/17

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resolution process, the Workers' Compensation Court approach. I do not question the well-meaning intentions of all involved and share in the goal of legal and fiscal reform. But regardless of well-meaning intentions and the recognized immediate concern for reducing cost, one central fact remains: There has to be a mechanism for resolving disputes about compensability of claims and amounts of benefits if we are going to have any system at all for helping injured workers. This is not to say just workers in heavy industry, but virtually every worker in the state -- office worker, school teacher or grocery store checker. My interest is in having the most fair, efficient and cost effective system possible.

Court v. Industrial Appeals Board:

Without reservation, I unequivocally favor that disputes be resolved by the Workers' Compensation Court.

- (1) This Court was established as a direct result of the Legislature's dissatisfaction with the previous method of deciding disputes. This dissatisfaction was evidenced by the Legislature's refusal to follow the recommendations of the Montana Commission on Executive Reorganization (Report, 1970) to place decision-making in the hands of the Division. The Legislature created the Court out of concerns for independence in decision-making. This Legislature should be

concerned with that same impartiality. In my judgment the Department bill does not adequately address that concern. It is essentially the old system. In no area of the law is there more concern for the appearance of impartiality and fairness. When disputes are decided, the decision-maker must be viewed by the worker as absolutely independent. Claims of conflict of interest are very strictly construed when the judging process is involved. This Legislature progressively, and wisely, addressed that concern when it created the Court. I have grave concern about the conflict issue raised by the Department proposal and urge that the Court be preserved.

- (2) The Advisory Council has studied the compensation system for months. Its membership is composed of the most knowledgeable and experienced workers' compensation functionaries in the state. It has recommended legislation that directly addresses the need to cut costs. The Department bill does not. The Advisory Council bill was composed after public hearing and reflection and like the Legislature before, recommended an independent judiciary.
- (3) There have been observations that the Court is the reason for the State Fund deficit. This is like saying the umpire is responsible for making the rules. The Legislature makes the law, the courts interpret that law. If, as it appears

the law needs changed, now is the time to address Supreme Court decisions and Compensation Court decisions that the Legislature decides are wrong or too costly. It certainly is not the time to change the one bright spot in the whole system for a system that failed once before and must be more costly. In that regard I will close by making this observation: I sincerely fail to understand how a system that would replace an excellent, efficient court (one Court) with an added layer of bureaucracy, with appeal to every District Court in the state, and then with appeal to the Supreme Court can possibly save money. I urge you to save the Court and change the law that, by definition, it must follow. The Advisory Council proposal fine-tunes a good system.

SENATE LABOR & EMPLOYMENT

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APR 17 1977

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AMERICAN INSURANCE ASSOCIATION
WESTERN REGIONAL OFFICE

717 Market Street, Suite 900
San Francisco, CA 94103
(415) 397-0711

February 13, 1987

Mr. Glen Drake
KELLER, REYNOLDS & DRAKE
38 South Last Chance Gulch
Helena, MT 59601

Dear Glen:

MONTANA WORKERS' COMPENSATION

I have a number of comments on the pending bill, though many of the comments are quite preliminary. I will turn around time. Many of the issues I will discuss are policy decisions which can only be made by the Montana legislature, and I am sure they want the Montana workers' compensation system to meet the needs of Montana employers and workers.

First, it cannot be stressed enough that Montana has serious workers' compensation problems compared to states in the region and nationally. I am enclosing a chart I prepared for a presentation to the Governor's Workers' Compensation Task Force in December, 1985. These statistics show that Montana had the highest frequency of workers' receiving permanent partial disability benefits, permanent total disability benefits and fatal benefits in the region. In other words, based on a comparison of the percentage of all workers receiving benefits, Montana workers received those benefits more often than surrounding states. Montana is high not only in numbers but also in costs. Montana ranked the highest in the region in the average cost per case for permanent partial disability benefits and for fatal benefits and was number two in the average temporary total disability benefit received. Not surprisingly, an independent premium comparison done by noted workers' compensation academician John Burton, showed that Montana's costs for workers' compensation per \$100 a payroll was easily the highest in the region. Based on a quick look at recent statistics, Montana benefit structure has continued to deteriorate since 1985.

SINCE THE LAST MEETING

EDWARD H. BUD
CHAIRMAN

DEROY C. THOMAS
VICE CHAIRMAN

ROBERT J. HAUGH
VICE CHAIRMAN

WENDELL TAYLOR
VICE CHAIRMAN

ROBERT J. VOGEL
TREASURER

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Senate Bill 315 has a number of good ideas including an attempt to relate permanent partial disability benefits to the actual job market ability of the worker, while at the same time guaranteeing compensation for a worker's impairment. There is an attempt to coordinate vocational rehabilitation benefits with entitlement to permanent partial and permanent total disability benefits. Attempts have been made to improve equity in the system for employers and workers by providing for continuing jurisdiction of the Board over closed claims. I am concerned that each of these laudable goals may be seriously flawed in the execution of S.B. 315. These flaws must be considered and corrected prior to enactment of this sweeping workers' compensation reform.

I will go through the bill in an attempt to isolate the issues as they appear.

The administrative structure suggested may be too cumbersome for a state the size of Montana. This proposal would create a new appellate board grafted on to the existing department/division structure without a showing that the current system cannot be made to work. On the other hand, the bill does nothing to change one of the most archaic provisions of Montana law which includes the state fund within the administrative arm of the workers' compensation system.

There are a number of other possible administrative structures which would serve the Montana system better, given its size. One suggestion would be to form a three to five member board, the chairman of which would not only be responsible for the appeals level but would also run the administration of the workers' compensation system. This proposal was developed by Jack Urling in an independent study conducted for the American Insurance Association. Mr. Urling goes into great detail concerning potential variants on the administration of workers' compensation. I will be pleased to provide a copy of this study if there is any interest.

I am concerned that three different sets of rules will govern the operations of the Division, the hearing officers and the new Board. (Sections 2, 4 & 20) I see the potential for massive procedural chaos from the lack of coordination between the various elements administering the workers' compensation system. This has been the case in California where there is no coordination between the rules of the Workers' Compensation Appeals Board and the Division of Industrial Accidents. Ever worse, this dichotomy of rule making authority has created an intolerable situation in Oregon where permanent partial disability is determined according to different rules depending on the level of adjudication. Not surprisingly, varying rules at the appeals level have encouraged appeals. Ninety percent of the PPD cases that are appealed are increased an average of 107%.

SENATE LABOR & EMPLOYMENT
EXHIBIT - 13
DATE - 2/17/87
BY - [signature] 3/1/87

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On page 7, the Board is given continuing jurisdiction over all prior orders of the hearing examiners. Apparently this ties in to changes on page 32, section 21, which eliminate the maximum four year jurisdictional authority which currently assures that there will be an end to a claim after a reasonable period of time. This is tied to changes on page 71, section 47 which eliminate compromise and release settlements except for compensability issues. It is apparent that any accepted claim has the potential to stay open forever under the proposed Montana system. We do not oppose this result, per se, but you should be aware that this makes it very difficult for insurers to close their books on a case and knock down reserves they have put up against potential future claims. This also enormously lengthens the "long tail" exposure in workers' compensation. Simply put, insurers will have to guess what the potential liability will be, absent the four year jurisdictional limit. Because of this unpredictability, insurers will have to charge more to cover their potential liability. In the event a claim is reopened seven or years after the policy year has been closed, insurers will have no way of reflecting any additional cost in the experience rating modification or in the rate base. This will make the Montana workers' compensation system even more unattractive to insurers who are attempting to instill predictability and rate adequacy into the system.

In Section 10 on page 12, there is a new 20% penalty for unreasonable delay of payment. This couples with provisions on page 47, section 31 of the bill which provide for attorneys fees if the insurer's actions are found to be "unreasonable". I am concerned that this combination of penalties, utilizing the extremely vague trigger of unreasonableness will potentially result in an automatic 20% penalty and add-on attorneys fees any time that the insurer is found to have denied a claim when that denial is subsequently reversed in the hearings procedure. There are a number of ways to structure penalties which are fair both to the worker and to the insurer. Penalties for unreasonable delay may be appropriate if the claim has not been denied or contested. Automatic penalties based on any delay in paying an accepted claim can be appropriate. Attorneys fees are not inappropriate when it is found that the denial or contention on the part of the insurer was frivolous or clearly without arguable grounds. The proposals in SB 315 go much further and may result in an unanticipated or desired result.

I have a suggestion for amendment to the definition of "maximum healing" on page 25. The language comes from a proposal in California, AB 1000, and is based on definitions developed by the American Medical Association. The language seems tighter than that being suggested for Montana.

I assume the definitions of injury on pages 28 through 30 are an attempt to force occupational disease into the occupational disease act. An injury would be limited to "physical harm", must be the result of a "specific event" and may not be a physical response to an emotional, mental or non-physical stimulus. Putting aside the issue of the fairness of excluding many cases under this definition, there are a number of questions which spring to mind. Will these cases, excluded from the workers' compensation system, find their way in to the fertile ground of Montana tort actions? Will these cases simply be changed to causes of action for wrongful discharge, emotional

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distress and failure to provide safe working procedures, training and ergonomic analysis of the work place? Will the courts simply construe their way around such issues as "specific event" or "primary cause"?

On page 31 section 19, line 17 the word "may" destroys the intent of the subsection. I am enclosing language from a California proposal which codifies a court decision in California, the Montana decision, which provides for special treatment of seasonal employment. If it is the intent of subsection (b) to deal with this issue, my proposed language will do a better job, with more certainty. The definition of wages never makes reference to "weekly," but only to pay periods. It would be preferable to discuss the definition of "wages" in same context as benefit payments i.e. weekly wages.

On page 34, section 23, line 14, in making a demand, the party should be required to document the existence of a dispute. This section should be coordinated with the notice provisions so that the worker has an affirmative duty to report the injury and is given a tear-off sheet as a receipt of notice which also includes a brief recitation of the worker's rights. If the worker is aggrieved by actions of the insurer, a mechanism should be put in place for informal resolution of any misunderstanding or disagreement. The mediation provisions in the bill must be substantially expanded. If the mediation system does not work, the party must then document the existence of the dispute. The provisions set out in section 23 are vague and do little to expedite understanding.

Section 24, page 35 conflicts with existing uniform safety incentives built into the rating system, including experience rating and retrospective rating provisions. There is no attempt to coordinate these programs with the new language. A better approach might be to surcharge employers who are found to be lacking appropriate safety programs.

On section 26, page 40, line 15, the terminology "more probable than not" is used. Elsewhere the more common test "preponderance of the evidence" is used. A single standard favoring the familiar preponderance test would be more acceptable.

On page 24, section 26, employers are given a new burden of stopping the employee's use of alcohol or drugs without appropriate standards or guidelines. It is very difficult to stop substance abuse on the part of others. Mere knowledge that the employee uses alcohol could trigger an impossible burden for the employer.

On page 51, section 35, line 16 this standard should read "the worker is qualified for the job." The worker should be given preference if the qualifications are there regardless of the qualifications of other applicants. The purpose of the workers' compensation system is to return a worker to work.

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On pages 52 et seq., the maximum benefit is never tied to the state's average weekly wage at the date of injury. I assume there is a catch-all provision so stating elsewhere. Otherwise, a worker whose benefits are capped by the maximum, below the actual two-thirds level will receive increases in subsequent years up to the full two-thirds level. Is this the intent? This is further complicated by the fact that a worker may be entitled on page 54 to double increases based on increases in the state average weekly wage as well as the cost of living increase.

On page 53, section 37, what is contemplated by "return to work"? Must this be full time, regular employment? The intent should be laid out here to avoid future litigation.

Page 56, section 38, while I agree with the intent of coordinating impairment, wage earning capacity and voc rehab., I am concerned that the standards on page 56 lines 21 et seq. are going to create a litigation nightmare. The concept of "worker's job pool" is replete with terms which can only be determined on a case by case basis, such as "typically available", "wages the worker is qualified to earn", "consistent" and "immediate job openings". These very loose terms will create a potential for as much litigation as currently exists in determining the extent of disability.

On page 59, section 39, it would be preferable to require a third evaluator only if the second evaluation produces an impairment difference of greater than 5% or some other low figure. In addition, the rating should be protected further than merely giving it a rebuttable presumption. The rating should stand, absent "clear and convincing" evidence that the American Medical Association guidelines were incorrectly applied.

On page 62, section 42, the elimination of permanent total disability may be inappropriate if the injury caused a worker who would otherwise be entitled to maximum social security disability benefits to receive less than that amount. I suggest that the insurer make up the difference between maximum and lower amount if the injury caused a change in social security entitlement status.

On page 66, section 45, to keep Montana benefits in line with an equitable approach, there should be some point at which the worker is entitled to retroactive payment of the first six days of lost wages. For example, if the worker is hospitalized or if disability extends for fourteen days post injury, the first six days should be paid to the worker.

My analysis of the vocational rehabilitation proposal is severely marred by a lack of time. Clear and concise vocational rehabilitation provisions are essential both to determination of permanent total disability entitlement as well as permanent partial disability benefits. Several things do pop out however.

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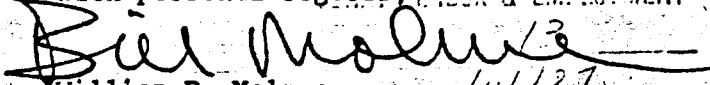
On pages 78, 79 and 80, there is an elaborate, bureaucratic procedure established for determination of vocational rehabilitation training provisions. Prior to a need for such a bureaucracy, there should be at least a requirement of a dispute. I have continuing concern that vocational rehabilitation responsibilities are shared with the Department of Social and Rehabilitation Services. I assume that this agency contains the federally funded vocational rehabilitation program which has been uniformly rejected as a tie-in to workers' compensation. There is a dichotomy of policy and direction between the two systems. This agency uses workers' compensation dollars to collect federal matching funds. Workers' compensation goals are then held hostage to the needs of the federal priorities.

We are also greatly concerned about the institutionalization of mandatory vocational rehabilitation. To some extent or another, mandatory vocational rehabilitation has proven itself to be a costly failure. The Washington system recently underwent an extensive renovation of its vocational rehabilitation program and eliminated statutory entitlement to vocational rehabilitation. The California system is absorbing 15% of incurred loss in its vocational rehabilitation program, despite an absence of clear abuse in the system. The Oregon system is undergoing a major review of its expensive vocational rehabilitation entitlement program. The Florida system which should work well in that it is directly tied to a wage loss program, has also been criticized as being wasteful and expensive. Montana is courting disaster if it ties its benefit structure to a vocational rehabilitation program which has not been thoroughly studied, evaluated and planned to eliminate the many problems found in the programs of other states.

Pending thorough review, I have two additional comments to make on vocational rehabilitation. On page 79, section 54, critical vocational rehabilitation information may be disclosed to the worker. Rehabilitation professionals will tell you that frank evaluations of a worker's job potential can be damaging to the worker. We have no objection to giving any of this information to a worker's attorney, if represented, but the worker should be protected from evaluations which could actually damage the incentive to return to work. I am also concerned that rehabilitation panel report specified in section 55 must identify the first appropriate option for rehabilitation and then describe findings of why a priority of higher ranking was not appropriate. This could be interpreted to require the vocational rehabilitation consultant to do a specific job analysis of each higher priority, thereby wasting huge sums of money in inappropriate rehabilitation analysis.

In conclusion, many of the principles embodied in the omnibus bill are sound and worthy of further examination. I am concerned that the specific language included in the bill will create many problems at the same time that it solves some of the many problems inherent in the current Montana workers' compensation system. I will be pleased to work with anyone in Montana who wants to follow up on my comments. If my presence would be useful as this bill is discussed in the legislative process, I will be pleased to attend.

With personal regards, LABOR & EMPLOYMENT



William P. Molmen

Vice President

FILE NO.

2/14/87
SB 315

1 rehabilitation bureau, which shall include appropriate
2 professional staff, and which shall have all of the following
3 duties:

4 (1) To foster, review, and approve rehabilitation plans
5 developed by a qualified rehabilitation representative of
6 the employer, insurer, state agency, or employee.

7 (2) To adopt rules and regulations which expedite and
8 facilitate the identification, notification, and referral of
9 industrially injured employees to rehabilitation services.

10 (3) To coordinate and enforce the implementation of
11 rehabilitation plans.

12 (b) No provision of this section nor of any rule,
13 regulation, or rehabilitation plan developed or
14 promulgated under this section nor any benefit provided
15 pursuant to this section shall apply to any injured
16 employee whose injury occurred prior to January 1, 1975.
17 Nothing in this section shall affect any plan, benefit, or
18 program authorized by this section as added by Chapter
19 1513 of the Statutes of 1965 or as amended by Chapter 83
20 of the Statutes of 1972.

21 (c) The time within which an employee may request
22 vocational rehabilitation benefits is set forth in Sections
23 5405.5, 5410, and 5803.

24 SEC. 19. Section 3205 of the Labor Code is amended
25 to read:

26 3205. "Division" means the Division of Workers'
27 Compensation.

28 SEC. 20. Section 3205.5 of the Labor Code is amended
29 to read:

30 3205.5. "Appeals board" means the Workers'
31 Compensation Appeals Board of the Division of Workers'
32 Compensation.

33 SEC. 21. Section 3206 of the Labor Code is amended
34 to read:

35 3206. "Administrative director" means the Director
36 of the Division of Workers' Compensation.

37 SEC. 22. Section 3208.3 is added to the Labor Code, to
38 read:

39 3208.3. "Date of maximum medical improvement"
40 means the date after which further recovery from or

1 lasting improvement to, an injury can no longer
2 reasonably be anticipated, based upon reasonable
3 medical probability.

4 ~~SEC. 23.~~ Section 3208.4 is added to the Labor Code, to
5 read:

6 3208.4. "Permanent impairment" means any
7 anatomic or functional abnormality or loss, existing after
8 the date of maximum medical improvement, which
9 results from an injury.

10 SEC. 24. Section 3600 of the Labor Code is amended
11 to read:

12 3600. (a) Liability for the compensation provided by
13 this division, in lieu of any other liability whatsoever to
14 any person except as otherwise specifically provided in
15 Sections 3602 and 3706, shall, without regard to
16 negligence, exist against an employer for any injury
17 sustained by his or her employees arising out of and in the
18 course of the employment and for the death of any
19 employee if the injury proximately causes death, in those
20 cases where the following conditions of compensation
21 concur:

22 (1) Where, at the time of the injury, both the
23 employer and the employee are subject to the
24 compensation provisions of this division.

25 (2) Where, at the time of the injury, the employee is
26 performing service growing out of and incidental to his
27 or her employment and is acting within the course of his
28 or her employment.

29 (3) Where the injury is proximately caused by the
30 employment, either with or without negligence.

31 (4) Where the injury is not caused by the intoxication
32 of the injured employee.

33 (5) Where the injury is not intentionally self-inflicted.

34 (6) Where the employee has not willfully and
35 deliberately caused his or her own death.

36 (7) Where the injury does not arise out of an
37 altercation in which the injured employee is the initial
38 physical aggressor.

39 (8) Where the injury does not arise out of voluntary
40 participation in any off-duty recreational, social, or

	* Cost per \$100 payroll	Max TTD per week single worker	Lost time Benefit costs per 100,000 worker-years	Frequency per 100,000 worker years			Average Cost per case			
				Fatal	PTD	PPD	Fatal	PTD	PPD	TTD
			* PPD Benefit Costs/100,000 w/y							
Arizona	\$1.36	\$ 203.86	\$10,187,000 * \$ 9974,000	8	5	451	\$68,769	\$166,353	\$ 11,029	<u>\$ 1933</u>
Colorado	\$1.43	<u>\$315.98</u>	\$23,521,000 + \$17,525,000	10	<u>11</u>	590	\$132,345	\$283,384	\$ 29,704	\$ 675
Idaho	\$1.39	\$261.10	\$14,553,000 * \$8,428,000	16	4	592	\$70,943	<u>\$651,185</u>	\$14,236	\$ 1,243
Montana	<u>\$1.71</u>	\$286.00	<u>\$31,268,000</u> * <u>\$21,963,000</u>	<u>19</u>	<u>11</u>	<u>659</u>	<u>\$235,033</u>	\$159,986	<u>\$33,328</u>	\$1,563
	\$.80	\$310.00	\$6,546,000 * \$4,352,000	16	0	394	\$61,185	0	\$11,045	\$605
	* 1983 costs per John Burton									

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1 (1) Where the employee's injury or death is
2 proximately caused by a willful physical assault by the
3 employer, or his or her managing representative.

4 (2) Where the employee's injury is aggravated by the
5 employer's fraudulent concealment of the existence of
6 the injury and its connection with the employment, in
7 which case the employer's liability shall be limited to
8 those damages proximately caused by the aggravation.
9 The burden of proof respecting apportionment of
10 damages between the injury and any subsequent
11 aggravation thereof is upon the employer.

12 (3) Where the employee's injury or death is
13 proximately caused by a defective product manufactured
14 by the employer and sold, leased, or otherwise
15 transferred for valuable consideration to an independent
16 third person, and that product is thereafter provided for
17 the employee's use by a third person.

18 (c) In all cases where the conditions of compensation
19 set forth in Section 3600 do not concur, the liability of the
20 employer shall be the same as if this division had not been
21 enacted.

22 SEC. 26. Section 4451 of the Labor Code is repealed.

23 SEC. 27. Section 4452 of the Labor Code is repealed.

24 SEC. 28. Section 4452.5 of the Labor Code is amended
25 to read:

26 4452.5. As used in this division, "permanent total
27 disability" means a permanent impairment which is
28 deemed to permanently and totally incapacitate an
29 employee from earning wages.

30 SEC. 29. Section 4453 of the Labor Code is amended
31 to read:

32 4453. Except as otherwise provided in Sections 4456,
33 4457, 4458.2, and 4458.5, the average weekly earnings shall
34 be determined as follows:

35 (a) Except as provided in subdivisions (b), (c), and
36 (d), the average weekly earnings shall be the daily
37 earnings at the time of the injury times 100 percent of the
38 number of working days a week.

39 (b) If the employment is seasonal or intermittent, as
40 defined by the administrative director, the average

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FILE NO. 15B 3/5

1 weekly earnings shall be as follows:

2 (1) For temporary disability indemnity, during
3 period immediately following the injury during w
4 full employment was reasonably anticipated, the we
5 earnings customarily earned by the employee in
6 employment at the time of injury times 100 percent o
7 number of working days a week.

8 (2) For temporary disability indemnity, during
9 period of temporary disability other than that for
10 period specified in paragraph (1), 100 percent of
11 earnings for the calendar year immediately prece
12 the date of the injury divided by 50.

13 (3) For wage replacement benefits, 100 percent o
14 earnings for the calendar year immediately prece
15 the date of the injury divided by 50.

16 (4) For permanent total disability indemnity,
17 percent of the earnings for the calendar
18 immediately preceding the date of the injury divided
19 50.

20 (c) Where the employee is working for two or m
21 employers at or about the time of the injury, the aver
22 weekly earnings shall be taken as 100 percent of
23 aggregate of the earnings from all employme
24 computed in terms of one week; but the earnings fr
25 employments other than the employment in which
26 injury occurred shall not be taken at a higher rate t
27 the hourly rate paid at the time of the injury.

28 (d) If the earnings are at an irregular rate, such
29 piecework, or on a commission basis, the average wee
30 earnings shall be taken as 100 percent of the earnings
31 the calendar year immediately preceding the date of
32 injury divided by 50.

33 SEC. 30. Section 4453.1 of the Labor Code is repea

34 SEC. 31. Section 4453.5 of the Labor Code is repea

35 SEC. 32. Section 4454 of the Labor Code is amend
36 to read:

37 4454. In determining average weekly earnings, the
38 shall be included money payments for services rendere
39 overtime, the market value of board, lodging, and fu
40 and other advantages received by the injured employ

SENATE LABOR & EMPLOYMENT

ENRIT NO

GIL NO



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406/442-1708

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JIM MURRY AND I AM THE EXECUTIVE SECRETARY OF THE MONTANA AFL-CIO. WE ARE HERE TODAY SUPPORTING SENATE BILL 330 WITH CONSIDERABLE RELUCTANCE.

OUR RELUCTANCE IN SUPPORTING SB 330 COMES BECAUSE THERE APPEARS TO BE A 20 TO 25 PERCENT TOTAL BENEFIT LOSS TO THE INJURED WORKERS OF MONTANA UNDER THIS LEGISLATION.

THAT BENEFIT LOSS IS A RESULT OF SEVERAL SUBSTANTIAL REDUCTIONS: IN PERMANENT PARTIAL DISABILITY BENEFITS, BECAUSE OF DRASTIC REDUCTIONS IN BENEFITS FOR WIDOWS, BECAUSE OF THE FAILURE TO PAY WORKERS FOR THE FIRST 6 DAYS OF WAGES LOST AFTER AN INJURY OCCURS AND BECAUSE PRE-EXISTING CONDITIONS WOULD NO LONGER BE COMPENSATED.

THESE ARE JUST A FEW OF THE AREAS WHERE INJURED WORKERS ARE ASKED TO MAKE A SUBSTANTIAL SACRIFICE.

I MIGHT ADD THAT WE ARE ALSO DISTURBED THAT AN INJURED WORKER UNDER THIS LEGISLATION WILL NOT HAVE ATTORNEY'S FEES PAID BY THE INSURANCE COMPANY, EVEN IF THE WORKER IS SUCCESSFUL IN MAKING HIS OR HER CASE IN COURT. THAT TO US, IS GROSSLY UNFAIR.

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BUT WHILE WE DON'T LIKE THESE CUTS IN BENEFITS TO INJURED WORKERS. . . WE REALIZE THAT SENATE BILL 330 IS BY FAR THE MOST RESPONSIBLE LEGISLATION BEFORE THIS COMMITTEE. AND, WE ALSO REALIZE THAT SOME SACRIFICES WILL HAVE

MR. CHAIRMAN, BACK IN 1969, WE BEGAN TO SEE SOME DRAMATIC IMPROVEMENTS IN MONTANA'S WORKERS COMPENSATION ACT. THE MONTANA STATE AFL-CIO PARTICIPATED WITH THE GOVERNOR'S ADVISORY COUNCILS TO MAKE RECOMMENDATIONS FOR CHANGES IN MONTANA'S WORKERS COMPENSATION SYSTEM.

THESE COUNCILS WERE COMPRISED OF REPRESENTATIVES OF THE BUSINESS COMMUNITY, THE INSURANCE INDUSTRY, SELF-INSURERS, BOTH CLAIMANT'S AND DEFENSE ATTORNEYS, AGRICULTURE AND ORGANIZED LABOR. THOSE ADVISORY COUNCIL'S RECOMMENDATIONS WERE BASED UPON OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION GUIDELINES THAT DIRECTED THAT THE STATES MUST UPGRADE AND IMPROVE THEIR WORKERS COMPENSATION LAW WITH THE THREAT OF FEDERAL GOVERNMENT INTERVENTION.

THE MONTANA LEGISLATURE RESPONDED TO THE ADVISORY COUNCIL'S RECOMMENDATIONS BY RESPONSIBLY CREATING ONE OF THE BEST WORKERS COMPENSATION LAWS IN THE NATION.

BUT MONTANA WORKERS WERE ALSO RESPONSIBLE AS THEY CONTINUED TO BE ONE OF THE MOST PRODUCTIVE WORK FORCES IN THE NATION. ACCORDING TO AN INC. MAGAZINE SURVEY IN OCTOBER, 1985, MONTANA WORKERS ACHIEVED THE FOURTH HIGHEST RANK IN THE NATION IN VALUE ADDED PER WORKER PER YEAR.

TODAY, WITH BURGEONING DEFICITS IN THE SYSTEM, WE ARE TOLD THAT THE SYSTEM HAS GONE AWRY. CONTENTIONS HAVE BEEN MADE THAT COURT DECISIONS AND LAWYER INVOLVEMENT WITH THE SYSTEM HAVE CAUSED EXCESSIVE JUDGEMENTS. BESIDES ALLEGED PROBLEMS WITHIN THE SYSTEM, THERE HAVE ALSO BEEN RUMORS OF ABUSE AND POSSIBLE FRAUD.

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THESE RUMORS ARE NOT FROM UNIDENTIFIED SOURCES, BUT RATHER FROM KNOWLEDGEABLE PEOPLE IN RESPONSIBLE POSITIONS. IN FACT, ONE OF THE MOST OUTSPOKEN LEADERS EXPRESSING CONCERN OVER POSSIBLE ABUSES IS REPRESENTATIVE BOB MARKS, SPEAKER OF THE MONTANA HOUSE OF REPRESENTATIVES.

IN A FEBRUARY 1, 1987 ASSOCIATED PRESS STORY, REPRESENTATIVE MARKS EXPRESSED CONCERNS OVER 'INDICATIONS OF QUESTIONABLE PAYMENTS FROM THE WORKERS COMPENSATION FUND.' REPRESENTATIVE MARKS SAID IN THAT SAME AP STORY, AND I QUOTE "IF THESE CONCERNS ARE GENUINE, THERE IS A HIGH INDICATION TO ME, THAT THERE IS FRAUD."

ON THE FOLLOWING MONDAY, DURING A MEETING OF THE LEGISLATIVE AUDIT COMMITTEE, LEGISLATIVE AUDITOR SCOTT SEACAT STATED THAT LEGISLATORS NEED "ASSURANCE THAT THERE ARE NO MAJOR ADMINISTRATIVE PROBLEMS IN THE WORKERS COMPENSATION SYSTEM BEFORE THEY UNDERTAKE MAJOR REFORMS OF THE SYSTEM."

MR. CHAIRMAN, THIS COMMITTEE IS CONSIDERING THE MOST DRAMATIC CHANGES CONTEMPLATED IN THE ACT'S HISTORY. THE CHANGES THAT YOU ARE CONSIDERING IS NOT ONLY DRAMATIC AS COMPARED TO PAST CHANGES, BUT IT IS TRAUMATIC TO THE INJURED WORKERS THAT ARE BEING ASKED TO MAKE SUCH SIGNIFICANT SACRIFICES. WE AGREE WITH MR. SEACAT THAT ALL THE CARDS MUST BE ON THE TABLE BEFORE WE UNDERTAKE SUCH MAJOR REFORMS OF THE SYSTEM.

WE HOPE YOU WILL CONSIDER CALLING REPRESENTATIVE MARKS BEFORE YOUR COMMITTEE TO DISCUSS AT LENGTH HIS ALLEGATIONS. BECAUSE IT IS IMPERATIVE THAT YOU HAVE ALL INFORMATION AVAILABLE REGARDING POSSIBLE FRAUD AND ABUSE BEFORE YOU PROCEED WITH DISMANTLING THE LAW.

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WE BELIEVE THAT MANY PROBLEMS WITHIN THE SYSTEM EXIST BECAUSE OF MISMANAGEMENT AND ADMINISTRATIVE ERRORS. WE ARE DISTURBED THAT THESE ADMINISTRATIVE PROBLEMS AND THE COST TO THE SYSTEM HAVE BEEN LARGELY IGNORED.

WE HAVE RECEIVED NUMEROUS COMPLAINTS FROM WORKERS THAT THE SYSTEM DOES NOT RESPOND TO THEIR NEEDS. FOR EXAMPLE, WORKERS CALLING THE DIVISION OFFICE LONG-DISTANCE, AT THEIR OWN EXPENSE, HAVE COMPLAINED THAT THEY HAVE BEEN PUT ON HOLD INDEFINITELY AND THEN CUT-OFF.

WORKERS REPEATEDLY STATE THAT THEY DO NOT RECEIVE THE BENEFITS THEY ARE ENTITLED TO AND THAT THE DIVISION DOES NOT RESPOND TO THEIR COMPLAINTS-- NECESSITATING THE HIRING OF AN ATTORNEY.

FOR EXAMPLE, A FEBRUARY 8, MISSOULIAN LETTER TO THE EDITOR, WHICH IS ATTACHED TO THIS TESTIMONY, POIGNANTLY DESCRIBES THE FRUSTRATIONS THAT AN INJURED WORKER HAD IN DEALING WITH THE SYSTEM.

ALSO, REPRESENTATIVE JERRY DRISCOLL, PRESIDENT OF THE MONTANA STATE AFL-CIO HAS REPEATEDLY ASKED FOR DATA ON THE NUMBER OF EMPLOYERS WHO ARE ILLEGALLY NOT PAYING THEIR WORKERS COMPENSATION PREMIUMS. THE WORKERS COMPENSATION DIVISION SAID THEY COULD NOT PROVIDE THIS INFORMATION TO REPRESENTATIVE DRISCOLL CONTENDING THAT THE DATA IS UNAVAILABLE. YET, IN MANY COMMITTEE HEARINGS WHICH HAVE BEEN HELD, THE WORKERS COMPENSATION DIVISION HAS STATED THAT AS MANY AS 1,000 EMPLOYERS ARE ILLEGALLY NOT PAYING WORKERS COMPENSATION PREMIUMS.

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IT'S CLEAR THAT THERE HAS NOT BEEN A CONCERTED EFFORT MADE BY THE WORKERS COMPENSATION DIVISION TO INVESTIGATE AND DETERMINE THE COSTS OF THESE PROBLEMS. AND UNTIL THESE COSTS AND THE IMPACT ON THE FUND'S DEFICIT ARE DETERMINED, LEGITIMATE BENEFITS TO WORKERS SHOULD NOT BE CURTAILED.

WE ARE ALSO CONCERNED THAT PREMIUM LEVELS HAVE NOT BEEN SET HIGH ENOUGH TO ADEQUATELY FUND THE STATE SYSTEM. IT HAS BEEN TESTIFIED TO IN AN EARLIER HEARING THAT THE DIVISION PURPOSELY REFUSED TO ASSESS PREMIUMS AT LEVELS THAT WOULD ADEQUATELY FUND THE STATE WORKER'S COMPENSATION PROGRAM, AND SUCH ACTIONS WERE TAKEN CONTRARY TO THE STATE FUND'S OWN INDEPENDENT ACTUARIAL ADVICE. THAT IMPACT ON THE STATE FUND SEEMS TO HAVE BEEN IGNORED ALSO

OUR ORGANIZATION HAS RECEIVED MANY COMPLAINTS FROM WORKERS WHO HAVE BEEN INJURED AND WHO ARE FORCED INTO REHABILITATION REVIEWS AND PROGRAMS THAT SEEM TO BE OF LITTLE ASSISTANCE IN RETURNING WORKERS TO PRODUCTIVE EMPLOYMENT. IT APPEARS THAT MUCH OF THE REHABILITATION EFFORTS HAVE RESULTED IN UNNEEDED ADDITIONAL COST TO THE WORKERS COMPENSATION SYSTEM.

IF THAT COST IS UNNECESSARY, THEN WE WOULD SUGGEST THAT PREMIUM COST CUTS BE MADE THERE.

FINALLY, THE ADJUDICATION OF CLAIMS SHOULD NOT BE BIASED. WE BELIEVE THAT IF THE WORKERS COMPENSATION COURT IS ABOLISHED IT WILL ONLY LEAD TO MORE STEPS IN THE ADJUDICATION PROCESS WHICH WILL INCREASE COSTS, BENEFIT LAWYERS, DELAY DECISIONS, AND CONCEIVABLY LEAD TO UNFAIR AND BIASED DECISIONS.

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MR. CHAIRMAN, WE FEEL STRONGLY THAT SENATE BILL 330 IS THE BILL
FROM WHICH YOUR COMMITTEE MUST WORK. IT IS CLEARLY THE LEAST PUNITIVE
OF THE TWO MEASURES BEFORE YOU, WHILE REFLECTING A MORE RESPONSIBLE
APPROACH TO DEALING WITH MONTANA'S WORKERS COMPENSATION PROBLEMS.

SENATE LABOR & EMPLOYMENT

EXHIBIT 14

DATE 2/11/87

BILL NO. SB 315

An injured system

As an injured worker, I would like to offer this concerning our present problem concerning the Workers' Compensation system.

Like any "business" when it has failed to perform as required, the blame for its success or failure is inevitably and justifiably placed firmly on the shoulders of its management!

As a manager myself for some 14 years in the automotive profession, I have never seen the customers blamed or punished because the business lost money or was strangled by its procedures.

For 20 years I have worked and supported myself and later my family with never a problem with injury or inability to do so until through a job-related back injury, I was forced out of work to have surgery.

Suddenly I was forced to deal with the system I had quietly ignored for all of these years.

It is like a nightmare that you hope to awake from at any moment. There is a maze of procedures, paperwork, and delay that is incomprehensible until experienced.

The "voices" over the phone at the Workers' Compensation Division won't give you any information until your human identity has been wrenched from you and replaced by some computer claim number, which takes what seems to be an eternity when the rent and bills are not being paid.

My first payment took approximately eight long weeks, and was far short of what it should have been. After much time and paperwork proving my entitlement to a larger weekly rate, I was granted and later denied a small increase. More appeals, documents and proof later, I was still told they were unable to get someone to make the proper decision.

Out of desperation, I was forced to hire an attorney by the very system that makes so much noise about lawyers and their fees.

Shortly, I was paid the back amount

owed and my weekly rate was raised to its correct amount. Without my lawyer, I quite literally would have been thrown out of my house, sued by bill collectors, and simply up the proverbial creek.

Rather than punish the "customers" and lay blame on the lawyers that are helping them, let's fix the mess in Helena and run the Workers' Compensation Division as it was intended, for those unfortunate people who are forced to utilize its intended purpose, to help the injured worker! — Len Anderson, 103 Peterson Place, Stevensville.

Missoulian, Sunday, February 8, 1987.

SENATE COMMITTEE ON LABOR AND INDUSTRY
DATE 2/14/87
FILE NO 85 315



MONTANA STATE BUILDING & CONSTRUCTION TRADES COUNCIL

IN AFFILIATION WITH

THE NATIONAL BUILDING & CONSTRUCTION TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR — CONGRESS OF INDUSTRIAL ORGANIZATIONS

President

Don Gimbel

Secretary-Treasurer

Dan Jones

February 16, 1987

Hon. J.D. Lynch, Chairman
Senate Labor and Employment
Relations Committee
Capitol Station
Helena MT 59620

Dear Senator Lynch:

On Saturday, February 14, 1987 I presented testimony before you and your committee on SB 315 and SB 330.

My comments centered around the abuses of employers who do not pay premiums to Workers' Compensation as required by state law, especially in the construction and logging industries.

There seem to be a number of methods by which an employer can do this, but one of the most blatant is for an employer to tell their workers that they are independent contractors. When employees complain that they need and want workers' compensation coverage, they are told not to worry; that if they get hurt on the job that the employer does not have to turn in coverage reports to Workers' Compensation for up to three months, and that they will be put down as an employee if they are injured on the job.

I believe that this practice is used a great deal by non-union contractors in order to achieve a competitive edge over union contractors who the union can check for benefit coverage.

I also believe that this practice is used much more widely than is believed and that it is costing the Workers' Compensation Fund millions of dollars and forcing fair contractors to pay higher premiums as a result.

I am formally requesting that you, as Chairman of the Senate Labor and Employment Relations Committee, have the State Department of Labor investigate this practice.

SENATE LABOR & EMPLOYMENT

FILED

DATE

BILL NO.

15

2/14/87

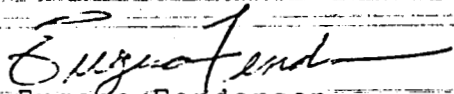
SB 315

page two

I am enclosing copies of the materials which I used in my testimony, and which you have requested.

If I can provide you with further information, please let me know.

Sincerely,



Eugene Fenderson
Lobbyist

EF/bcs

Enclosures

cc: Senate Labor and
Employment Relations Committee

SENATE LABOR & EMPLOYMENT

15

2/14/87

8/3 31-5

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COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

1127 - 11th Street, Suite 550, (916) 445-2125

Sacramento 95814

Chairman
NATHAN SHAPELLVice-Chairman
JAMES M BOUSKOSALFRED E ALOQUIST
Senator

MARY ANNE CHALKER

ALBERT GERSTEN JR

BROOKE KNAPP

HAIG G MARDIKIAN

MILTON MARKS
SenatorGWEN MOORE
Assemblywoman

MARK NATHANSON

M LESTER OSHEA

JEAN KINDY WALKER

PHILLIP D WYMAN
AssemblymanRICHARD C MAHAN
Executive Director

NEWS RELEASE: 10:15 a.m.

August 14, 1985

UNDERGROUND ECONOMY STUDY REPORT RELEASED:

STATE LOSING BILLIONS; CALL FOR ACTION

ON COMMISSION'S TWENTY RECOMMENDATIONS

In a Los Angeles news conference, the State's "Little Hoover Commission" released the results of its broad-based study of State programs to control the underground economy.

Each year the State is losing billions of dollars in taxes due to the underground economy in which employers, employees, and self-employed persons pay or receive cash for work performed or goods sold without paying a single dime in income, payroll, or sales taxes. The most common industries where cash-pay occurs is the construction and garment industries; the evasion of sales tax can be found in almost every part of the retail sector.

The Commission's final report, entitled "A Review of Selected Taxing and Enforcing Agencies' Programs to Control the Underground Economy," sets forth twenty specific recommendations for improvements including reorganizing some or all taxation responsibilities into a central agency; forming a special multi-agency strike force to conduct investigations and prosecutions of blatant tax and cash-pay violations; specific steps to improve information used to identify violators;

SENATE LABOR & EMPLOYMENT

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2/14/87

SB 315

expanded and improved enforcement techniques and sanctions; and increased fines for repeat violators.

"This year California will lose more than \$2 billion in revenues to the underground economy--that's nearly 20 percent of the total income taxes collected in 1984. The State, quite simply, must do more to combat this ever growing problem," stated Nathan Shapell, Chairman of the Commission.

The development of effective, practical recommendations, said Shapell, began with the appointment of a Blue Ribbon Advisory Committee represented by virtually all interested parties including the Chairmen of the Assembly Committee on Labor and Employment and Senate Committee on Industrial Relations, the Administration, both labor and employer organizations, and various other experts. The Committee was chaired by Mr. Michael Kassan, a former member of the Commission and a practicing tax attorney.

Urging action on the recommendations proposed in the report, Shapell stated, "The benefits to the State from implementing our recommendations and reducing the size of the underground economy are immense--literally billions are being lost. If we can eliminate only five percent of the problem, the State could realize a \$100 million increase in its income tax revenues alone."

Assemblyman Richard Floyd (D-Hawthorne), Chairman of the Assembly Committee on Labor and Employment, commended the report's recommendations and pledged to pursue the reforms with hearings and legislative proposals for 1986.

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SENATE LABOR & EMPLOYMENT
EX-114
2/14/87
S/B 3/5

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

1127 - 11th Street, Suite 550, (916) 445-2125

Sacramento 95814



CHAIRMAN NATHAN SHAPELL'S

STATEMENT AT PRESS CONFERENCE

ON THE STATE'S PROGRAMS

TO CONTROL THE UNDERGROUND ECONOMY

August 14, 1985

Chairman
NATHAN SHAPELLVice-Chairman
JAMES M. BOUSKOSALFRED E. ALQUIST
Senator

MARY ANNE CHALKER

ALBERT GERSTEN, JR.

BROOKE KNAPP

HAIG G. MARDIKIAN

MILTON MARKS
SenatorGWEN MOORE
Assemblywoman

MARK NATHANSON

M. LESTER O'SHEA

JEAN KINDY WALKER

PHILLIP D. WYMAN
AssemblymanRICHARD C. MAHAN
Executive Director

Good morning ladies and gentlemen. Thank you for coming. We are here today to announce the release of the Little Hoover Commission's report on California's Underground Economy.

At this very minute, millions of dollars in business transactions are taking place across this State for which there will never be a single dime of income, sales, or payroll taxes paid to the State government. I'm not referring to criminal business such as prostitution or gambling. Rather, I am talking about the largest segment of California's Underground Economy -- the literally hundreds of thousands of daily transactions involving self-employed persons and employers and employees who pay or receive cash for work performed or for goods sold without withholding or reporting the proper income, payroll, or sales taxes.

What may seem to be a small or perhaps trivial problem to those participating, accounts for approximately \$40 billion a year in California in otherwise legal business transactions -- and it's growing.

Experts testifying at our public hearings estimated that California loses more than \$2 billion each year in income taxes alone because our taxation and enforcement system has to date been unable to catch these tax cheaters. That's almost 20 percent of the total income tax the State collected last year.

However, the effect on State government is not limited to the billions of dollars in lost income, sales, and payroll taxes. The participants in the underground economy also fraudulently file for welfare payments and use the Medi-Cal program to pay for their health care. Additionally, there are no contributions to unemployment insurance, disability, or social security although claims against these funds continue, frequently by the worker receiving his or her wages in cash. As a result, the overall price to the honest taxpayer is monumental.

SENATE LABOR & EMPLOYMENT

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The underground economy can be found in virtually any profession. But the worst cases involve the construction and garment industries where some employees are paid in cash without income or payroll taxes ever being reported.

The continuing growth of the underground economy prompted Governor Deukmejian to ask our Commission to investigate the overall problem and develop recommendations for improving the State's taxing and enforcement mechanisms. Because of the unique problems associated with this issue, our Commission appointed a Blue Ribbon Study Advisory Committee to provide valuable insights and guidance on this study. Virtually all knowledgeable parties were represented including the Chairmen of the Senate Committee on Industrial Relations and Assembly Committee on Labor and Employment, the directors of the various State taxing and regulatory agencies, the U.S. Internal Revenue Service, management and employer organizations, employee and union organizations, attorneys specializing in labor and taxation, and a partner of a Big-Eight accounting firm. These individuals worked with our Commissioners and expert consultant to develop an extensive list of findings and recommendations for substantial improvements.

Simply put, the system to control the underground economy consists of three fundamental elements. First, government must have good information to detect the tax cheaters. Second, government must have adequate enforcement tools to take swift and strong action against participants in the underground economy and to create a major deterrent. Finally, government must have well organized and coordinated resources to maximize its attack on the underground economy, and thereby improve voluntary compliance with the tax laws.

Our study concluded that major improvements are needed in each of these areas. Although our report presents numerous detailed findings, we believe a significant number of the problems exist because of the State's fragmented organization of responsibilities in which three taxing agencies and at least two other enforcement agencies are involved at some level in combating the underground economy.

As a result, each agency operates with (1) objectives that, at times, conflict with one another; (2) information systems which are not sufficiently coordinated; and (3) resources that are not maximized towards the enforcement of our tax and labor laws. The end result -- the State loses billions of dollars in revenues.

Because the question of organization cuts across the major elements of an effective taxation and enforcement system, our Commission presents two major recommendations for long-term and short-term resolution:

SENATE LABOR & EMPLOYMENT

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2/14/77

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First, we recommend that the Governor and Legislature reorganize some or all State taxation responsibilities into a central agency; the level of reorganization should be based upon a detailed study by a team of experts.

Second, at least until reorganization occurs, we believe the Governor and Legislature should establish a Multi-Agency Strike Force to conduct broad investigations and audits of blatant tax and labor violations leading to the levying of the maximum civil and criminal penalties available. The results of these cases must be extensively publicized so that the word will get out -- you can no longer get away with violating tax and labor laws in California.

Before asking Mr. Michael Kassan, the Chairman of our Advisory Committee to summarize other findings and recommendations outlined in the report, let me just emphasize that the benefits to the State from implementing our recommendations and reducing the size of the underground economy are monumental -- literally billions are being lost. If only a 5 percent improvement is made, it would generate \$100 million in additional income tax alone.

Now I'd like to introduce Mr. Michael Kassan.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 15
DATE 2/4/87
FILE NO. 23 315

NAME:

Maggie Shier

DATE:

2/14/87

ADDRESS:

Box 125 Huntley, mt.

PHONE:

259-3924

REPRESENTING WHOM?

Self

APPEARING ON WHICH PROPOSAL:

S.B. 330

DO YOU:

SUPPORT?

☒

AMEND?

OPPOSE?

COMMENT:

I was injured on a ranch where
I work and sent in a form (37) they
put me on a lower pay scale then
I am entitled to. I tried on my
own to explain what amount I make
and how - by the day not week - and
they ignored me and my second form I
sent in. That's when I went to a lawyer
He informed me of my rights to other things
I could put on the wage scale (which
I wouldn't have known).

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO.

16

DATE

2/14/87

FILE NO.

30315

Council SB 330

February 4, 1987

Lincoln County Legislators
Capitol Station
Helena, Mt. 59620

Dear Legislator:

We have been led to believe that the Workman's Compensation system is in dire straits because of, 1) fraud within the system, as well as workers being able to benefit from the system while not being truly injured, 2) attorneys and their high fees and costs to the system, 3) past liberal court decisions in regards to claims filed by injured workers, and, last but not least, bad employers, themselves.

To help offset the problems, the Governor, under pressure from various groups, has come up with what is now to be called the "saviour of the system".

I am not going to disagree that there isn't problems with the system that need to be addressed, because there is. My concern is, if all the above mentioned "culprits" are equal in causing the problems, then the fair and simple way to ease the problem is to attack the "culprits", equally. All the Governor's proposal does is take the easy way out and cut where it is the easiest, injured workers' pockets.

I see in the Governor's reform where injured workers will pay over 50% of the 30% savings the Division will experience, as a result of this "reform". Just guessing, but I would bet that restricted attorney fees would cover the bulk of the rest of the savings. So the rest of the "reform" bill is nothing but window dressing.

Injured workers already experience reduced earning capacity by just being injured. They do not need nor can they afford additional moneys taken out of their pockets.

Injured workers pay for things like, reduced benefits, limitations on how long they can receive full benefits, and restrictions on lump sum settlements.

I would encourage every worker to write a letter to their legislators urging them to oppose this bad "reform". There is no guarantee that today, tomorrow, or some time in the near future, you may need the help of the Compensation system. Are you willing to take that chance?

Thank you.

Don Wilkins
Business Agent
LPIW Local #2581
Libby, Mt. 59923

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 17
2/14/87
2/3 3/4

NAME: Don Jenkins DATE: 2-14-87

ADDRESS: ~~53~~ 200 N. Brooke, Whitehall, NY

PHONE: 287-3046 or 287-3257

REPRESENTING WHOM? Golden Sunlight Mines, Inc.

APPEARING ON WHICH PROPOSAL: SB 330

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 18

DATE 2/14/87

BILL NO. SB 315

330
TESTIMONY ON SB 245

Mr. Chairman, Members of the Committee:

For the record my name is Don Jenkins. I am employed as Administrative Superintendent of the Golden Sunlight Mine near Whitehall. ~~As some of you may know the Golden Sunlight is the largest producing gold mine in Montana today and employees approximately 160 people.~~ I am also Chairman of the Environmental, Health and Safety Committee of the Montana Mining Association, which represents every major hard rock mining company in Montana and ~~approximately 500~~ ^{several hundred} small miners and prospectors.

In addition, for the past two years, I have been a member of the Governor's Advisory Council on Worker's Compensation as a representative of the business community of Montana.

Two years ago today, February 14, 1985, Governor Schwinden spoke to the Advisory Council and gave us charge of the job at hand. He stressed to us the need for a "people sensitive, cost-conscious" Workers' Compensation program. He wanted us to balance the concerns of employers and workers. I agree with that philosophy.

At one of the first Council meetings I stated that employers are concerned with the high cost of doing business in Montana. Workers' Compensation rates are high, very high. I suggested that we find ways of reducing those costs by encouraging the injured worker to get back into the mainstream of the workforce once he reaches maximum healing and, if necessary, a rehabilitation program. After all, Workers' Compensation is an insurance program and not an early retirement or social welfare

SENATE LABOR & EMPLOYMENT
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SR 315

program as in some instances it is used for. ~~SB 315 addressee~~
~~that concern.~~

Montana's present system is very liberal and the financial condition of the State fund bears that out. As an example of that liberalism - we had an employee at our operation ^{who} ~~that~~ said he was injured while driving truck. He claimed the loader operator dumped a load of ore too roughly into the truck in which he was sitting causing injury to his back. The Federal Mine Safety and Health Administration (MSHA) investigated the so called accident and denied the claim on their reports. They suspected that he had a pre-existing condition. However, our out of State Insurance carrier at that time paid the claim. When I asked them why they didn't contest the claim they said with Montana's liberal interpretation of the law they had no chance of prevailing so the position they took was to settle with the claimant and get rid of the case. High cost of doing business in Montana! You Bet!

I think we all agree that a major overhaul of the system is needed if the fund is to become solvent again. The question is which is the best way to accomplish that goal? I am not going into the comparison of the SB 315 and 330 because you have heard that and will hear that the rest of the afternoon and, for that matter, the rest of the session, however, I would like to make a couple of comments. There is a need to reduce the legal involvement in Workers' Comp cases. I have a great deal of respect for our present Workers' Compensation Court, but I personally feel that it encourages litigation and increases the

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 18

DATE 2/14/87

FILE NO SB 315

cost of the system. I have to agree with the Governor's proposal to abolish the Court and replace it with hearing officers and a review board as long as qualified people are appointed to them. Although, the Advisory Council voted to retain the present court system, the vote was 6 to 5 with 9 not voting. I don't think this is an overwhelming endorsement of the court. I feel had the entire council been there to vote, the outcome may have been much different.

In closing, I would just like to say that at the end of the two year term on the Advisory Council I ~~found it difficult to~~ ^{found it difficult to} support its recommendation~~s~~ ^I ~~and I will~~ ^{feel} SB 315 will give us better control on the Workers' Compensation program and, hopefully, solve the financial problems of the State fund and eventually lower the Workers' Compensation premium rates~~s~~ ^{again}. Then maybe Montana can ^{again} become competitive with the rest of the country. Therefore, the Montana Mining Association, Golden Sunlight Mines, Inc. and I, as a member of the Governor's Advisory Council on Workers' Compensation, [✓] prefer SB 315, ~~and recommend its passage~~ ^{and oppose SB 330 and} Thank you.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 18

DATE 2/14/87

BILL NO. 23 315

KEITH OLSON
MT. Logging Assn.
EXECUTIVE DIRECTOR

SUPPORT FOR SD 315

I don't need to appear here today to convince anyone that Montana's Work Comp Act is failing... indeed it is on the very edge of collapse.

It would be great if we could identify a single solution to the problem. Unfortunately, it's not that easy... because we're all to blame:

We need to enhance our commitment to safety...

We need to enhance our commitment to claims management...

We need to enhance medical/rehabilitation procedures...

And we need to minimize litigation.

In short, we need to REFORM MT.'s Work Comp Act. Throughout the 20th century we have amended the Act to the extent it no longer is effective or affordable.

You will hear a great deal of rhetoric today... from proponents and opponents alike.

Throughout today's hearing I would like that you

all keep a single thing in mind:

Every time a Work Comp claim is litigated...

The injured worker has failed!

The system has failed the injured workers...

The system has failed the workers' families...

Work Comp is broken - it's time to fix it.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 19
DATE 2/14/97
BILL NO. SB 315

KEITH UL
Executive Director
MT. Logging Assn.

Now that we have heard both legislative proposals...
SB 315 and SB 330... we know that they are
largely similar. Which legislative proposal, then,
best reforms a work comp system which is
literally on the verge of collapse?

1. Despite the similarities in the two bills, we submit
that SB 315 represents ^{TRUE} work comp REFORM... while
SB 330 represents a continuation of the "band aid"
approach to reform which ~~throughout this century~~
has resulted in a work comp system ^{IN MT} which is no
longer effective for injured employees or affordable
for their employers.

Thus, Mr. Chairman, the MLA rises in opposition
to SB 330.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 19
DATE 2/1/97
BILL NO. SB 315

To reduce the cost of work comp coverage SB 330 proposes to reduce permanent partial benefits from 500 weeks to 350 weeks. Such a reduction is ^{an example of} a calculable savings.

II. However, SB 330 also proposes the following language: "Factors to be considered in determining an indemnity award include the workers' medical impairment rating, physical condition, age, education, work history, continuing pain, ^{potential} actual wage loss, loss of future earnings, AND any other relevant factor affecting the workers ability to engage in gainful employment."

Mr. Chairman, that language guarantees that every indemnity claim can be (if not will be) litigated... That language writes an attorney retirement program into Montana's work comp statute... That language prevents the calculation of an accurate financial exposure...

That language will not offset any savings SB 330 might otherwise afford...

That language will insure that the scope and cost of that common sense approach will grow out to some insupportable level - funding capacity...

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 19

DATE 2/14/87

BY NO. SB 315

III. EVERY TIME A WORK COMP CLAIM IS LITIGATED...
the Work Comp Act has failed:
It has failed the injured worker...
It has failed the injured workers employer...
And it has frustrated legislative intent.

If enacted, SB 330 will continue that frustration

the rate we are
def. of inj.
it includes everything
NXIETY
ZITS
IT MAKES NO ATTEMPT TO define such basic term
as: injury, wages or maximum healing.
Rather, it purports such definitions ^{must} be litigated.

SB 330 ^{never} does define "normal labor market"... but in such
a way as to discourage going back to work...
one of work comp's basic tenets.

THE ISSUE OF RETAINING THE WORK COMP COURT IS
BEING OVEREMPHASIZED. THE PARADIGM IN WORK COMP
MUST BE TO "... secure lost wages for injured workers
and provide medical treatment, rehabilitation and
returning... all through a self-administering system
that removes the possibility for litigation."

As for the "self-administering" system...
...but we will never achieve such
...the judiciary remains [to
...who knows how to manipulate.

Mr. Chairman, just as objectionable is the lump sum payment provisions of SB 330.

Lump Sum Payments provide 3 major problems:

- (1) They provide to an injured worker the value of his future benefits discounted to present value.
- (2) They provide to his attorney the opportunity to deduct his contingency fee.
- (3) They allow an insurer the opportunity to "buy out" of any further responsibility to the injured worker.

Members of the committee, I implore you to ask yourself who truly benefits from lump sum awards. I submit that in far too many instances we literally abandon the injured worker once a lump sum award is granted.

SENATE LABOR & EMPLOYMENT

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BILL NO.

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2/14/87
513 315

Mr. Chairman, members of the committee:

In conclusion, I ask ~~you~~ ~~to~~ ~~not~~ pass
recommendation for SB 330...

Because SB 330 does not simplify MT's work
comp system...

Because SB 330 does not propose to minimize
litigation...

Because SB 330 will not result in savings
or premium reductions for MT employers.

And because SB 330 proposes greater benefits to
insurers and attorneys than it does for injured
workers.

BECAUSE SB 330 does not emphasize an expedient and effective
rehabilitation program!

ubs, wage concessions, young people, - tax base:
esent system ~~do~~ not work...

SENATE LABOR & EMPLOYMENT

COMMITTEE NO. 19

DATE 2/14/87

FILE NO. SB 315

AMENDMENTS, SENATE BILL 315
SUBMITTED BY: THE MONTANA CHIROPRACTIC ASSOCIATION
FEBRUARY 14, 1987

Amend SB 315, first reading bill, as follows:

Page 31, line 18

Following: line 17

Insert: "NEW SECTION. Section 20. Medical evidence defined. "Medical evidence" means the testimony of a physician or other licensed practitioner of one of healing arts.

Page 57, line 25

Following: "be a"

Strike: "physician"

Insert: "primary health care provider"

Page 58, line 1

Following "37"

Strike: "chapter 3"

Insert: "of the same discipline or specialty as the claimant's treating physician"

Page 58, line 2

Following: "examiners"

Insert: "or other licensing board"

INFORMATIONAL CONTACTS

Dr. Howard Hultgren
944 Avenue B, Billings, MT 59102

Bonnie Tippy
Lobbyist, Montana Chiropractic Association
442-2052

SENATE LABOR & EMPLOYMENT
20
DATE 2/11/87
BILL NO. SB 315

My name is Tom Sinker. I am
Manager of Sinker's Halls Lumber Co.
in Boreman - I have come here to
testify in favor of Warden Cag.
B.11

We have been in business for over 41 years. Until the early 1980's we really had no problem with the workers' Compensation. However paralleling the experience of a stake firm, at this point in time we have seen a dramatic change in workers' Compensation. We have a runaway - an almost uncontrollable expense. I don't know what to do. The real problem I have with the system is that safety and safety programs can not fully deal with the problem. Workers' Compensation has become an attitude problem - it is viewed as a retirement program - a way for people to obtain wealth. It rewards the malingerers and penalizes the good honest Montana worker. The majority of my employees feel the system is unfair.

In these economic times it is imperative that a businessman be able to control costs. The present situation is that it is impossible for any one to get a handle on workers' compensation.

The ~~above~~ workers comp program proposed by Governor Swisher has been studied a great many people. It is a gross attempt to get the huge Montana problem under control. Workers Compensation is getting too expensive for most Montana employers - I ask for your approval of this bill. Failure to address the workers compensation problem in Montana has grave implications for the people and industry of Montana.

~~12/1~~ 12/13 MPR
12/13 NFB
12/13 NFB

-SENATE LABOR & EMPLOYMENT-

EXHIBIT NO. 2

DATE 2/14/87

Bill No. 23 3/4

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

My name is George Wood and I am Executive Secretary of the Montana Self-Insurers' Association.

I arise in support of the concepts provided in both Senate Bill 315 and Senate Bill 330.

We believe that it is absolutely necessary that Montana's employer be granted substantial relief from the uncertainties and the extremely high cost of Workers' Compensation. This Committee heard in previous testimony by both labor and employers, the extra-territorial bill, indicating that Montana Workers' Compensation costs are substantially greater than those in surrounding states. This places a burden on Montana employers and workmen and has led to the export of Montana jobs as well as reducing the number of jobs available in Montana.

A combination of the provisions of Senate Bills 315 and 330 could make meaningful reform of the Montana Workers' Compensation Act. A review of the 2 bills indicate approximately 25 identical provisions. I will speak only to those provisions that are not identical.

The first of these is the abolition of Workers' Compensation Court. This causes me concern.

After having managed claims and the litigation involved for 25 years under the Administrative proceedings - District Court - Supreme Court system, and under the Workers' Compensation Court - Supreme Court system for 10 years, I have found the Workers' Compensation - Supreme Court system vastly superior. The Workers' Compensation Division should not have management of the State Fund (Plan 3) and also be involved in the adjudication of disputes.

The apparent and actual conflict is readily noticeable. The Workers' Compensation Court should be retained. It should be reformed, however, by enacting the provisions of Senate Bill 330 pertaining to the Court. The way to reduce litigation is not to abolish the Court, but to write clear, concise statutes which are not open to interpretation.

I have grave reservations about the provisions of Senate Bill 315 which provide for the intrusion of the Department of Labor into the Workers' Compensation system. Further, Senate Bill 315, without amendment grants awesome power to the Workers' Compensation Division, the management of an insurance company, the adjudication of disputes together with supervision of the Workers' Compensation system. It will be a power unto itself.

(The amended bill should have definitions of "accident" and "injury". They need to be less restrictive than those contained in Senate Bill 315. During the past 70 years, we have had an Industrial Accident Board and statements about and statistics gathered on industrial accidents. We don't have now and never have had a definition of "accident".

The employers' problems surrounding the definition of accident are those involving:

1. repetitive trauma;
2. conditions resulting from the aging process;
3. discomfort felt while on the employer's premises;
- and
4. the relationship of Trauma to an ongoing disease process.

(Physiological and psychological distress while doing your "usual work in the usual manner" should not be an accident. Neither should the "unexpected result". Our real concerns can be addressed without the definitions being as restrictive as contained in Senate Bill 315.

Senate Bill 315 does provide a clear concise definition of wages and this should be adopted. Senate bill 315 does address the need for reform in eligibility for payment of benefits. Payment of temporary total benefits until maximum healing is certainly an improvement. A trial, at least, (

should be given to revisions in payment of permanent partial disability. However, this section should be amended to allow claim closure. Lump sum compromise settlements should be allowed on a voluntary basis between the injured worker and the insurer. The Courts should not have the power to order the payment of lump sums.

The provision for payments of impairments benefits should be deleted from Senate Bill 315 and the provisions of Senate Bill 330 adapted.

The provisions of Senate Bill 315 regarding permanent total disability are good. Standards for determining permanent total disability need to be adopted. They should be extremely restrictive and compensation should be paid on a biweekly basis only.

The liberal construction statute should not only have been repealed, as in Senate Bill 315, but the legislature should make an affirmative statement on interpretation, as is done in Senate Bill 330.

A rehabilitation statute is certainly needed. The section is Senate Bill 315 is almost beyond comprehension. Simplification is required.

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The section of Senate Bill 315 providing for impairment evaluation panels should be deleted. It is unnecessary and cumbersome.

I respectfully suggest that this committee has the unique opportunity to provide meaningful workers' compensation reform using Senate Bills 315 and 330 as a basis. You indeed have the opportunity to provide Montana with a Workers' Compensation system that is "people sensitive and cost conscious".

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I certainly would be available to the Committee to help with this endeavor in any way possible.

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WE, THE UNDERSIGNED CITIZENS OF THE STATE OF MONTANA, SUPPORT PASSAGE OF GOVERNOR SCHWINDEN'S WORKER'S COMPENSATION REFORM ACT. WE DO NOT NECESSARILY BELIEVE THAT IT IS A 'CURE ALL' BUT ARE FIRMLY IN FAVOR OF IT'S UNAMENDED PASSAGE TO PROVIDE A FIRM FOUNDATION UPON WHICH TO BUILD A SYSTEM THAT IS PEOPLE SENSITIVE AND COST EFFECTIVE. PERFECT - NO, WORKABLE -YES, AND ABSOLUTELY NECESSARY.

NAME:

OCCUPATION:

CITY OF
RESIDENCE:

Lila Erickson	Auto Rep.	Troy
Arlene Peterson	Food & Bar	Troy
Ralph Davis	Logger	Troy
Lynda B. Davis	Bar & Food	Troy
May Inboulit	Boiler Maker	NOXON
Thomas Ahernson	Logger	Whitefish
Robert Ineson	Logger	Whitefish
Kathleen Knudsen	Butcher / Cook	Troy
Rick Tallmadge	Logger	Troy
Robert B. Bessley	Vending	Troy
Denise Loe-Loeb	Free Appraiser	Troy
Edna W. Sperline	Logger	NOXON
Arthur Price	Const. Oper.	Troy
Chas. Sprang	Domestic Engineer	Troy

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 17, 1987

The thirteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 17, 1987, at 7:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

Senator Lynch explained that the committee is meeting primarily to discuss where we plan on going with the two Workers' Compensation bills, SB 315 and SB 330.

Senator Lynch said all were involved with ideas for change and reform of the Workers' Compensation Law, including the sponsors of the bills, Senator Bob Williams and Senator Fred Van Valkenburg and leadership members. After visiting with these people, Senator Lynch decided to form a subcommittee. Senator Lynch stated this will be a very hard-working subcommittee. He removed himself from the subcommittee and said most all of the committee has indicated a desire and willingness to serve on the committee. Senator Lynch feels four members would be a large enough subcommittee.

The subcommittee, after being appointed, will meet with all the factions at a convenient time to all, and they will report back to the main committee. Senator Lynch stated until we know further, we will go along with the assumption to have this bill out of committee by Friday, February 20, 1987. The committee will check the progress and see if the February 20 deadline is possible. In the event it is not possible, we will have to take an alternate route and see if an extension could be granted. Senator Lynch stated the subcommittee will decide which bill they will begin working on. Senator Lynch reminded the committee of the option of creating a committee bill, incorporating both bills.

Senator Thayer asked Senator Lynch if getting the bill out by Friday will meet the transmittal deadline. Senator Lynch replied yes, if it is out by Friday it will be on the debate stage before the transmittal date of Wednesday, February 25, 1987, it can be debated on Monday or Tuesday and be transmitted by Wednesday evening.

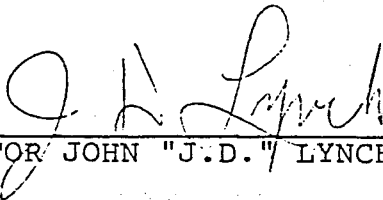
Chairman Lynch appointed the following members to the subcommittee: Senator Haffey, Chairman; Senator Blaylock, Senator Gage and Senator Thayer. Senator Lynch stated Mary McCue will work along with our researcher, Tom Gomez. Mary is very familiar with this section of the law we are dealing with. He said she will be at the disposal of the subcommittee.

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Senator Lynch stated the Labor and Employment Relations Committee entrusts the bills to the subcommittee and wishes them well.

ADJOURNMENT: There being no further business to come before this committee, the hearing adjourned at 7:10 p.m.



SENATOR JOHN "J.D." LYNCH, CHAIRMAN

jr

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS SUBCOMMITTEE
MONTANA STATE SENATE

February 18, 1987 A.M.

The first meeting of the Labor and Employment Relations Subcommittee was called to order by Chairman Haffey on February 18, 1987, at 8:40 a.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 315 AND SENATE BILL NO. 330:
Senator Haffey made the suggestion that the committee proceed very informally and include the principal role-players in the discussions and defer to them for a common ground. Senator Haffey suggested the committee approach this subject by identifying conceptual areas of importance. These areas could be shared ideas everyone wants to include in the Workers' Compensation bill and statutes or areas that still need to be considered further. Then, possibly a package of areas can be identified, or at least as many concepts as possible. These areas can then be put into a form of bill language. This language could be a new bill, or the language could be amended to the present bills. Senator Haffey stated there is a list of twenty-three areas that are common ground for both SB 315 and SB 330, and there are other areas where both bills stand alone. Senator Haffey would like the committee to work toward the direction of getting conceptual identification and agreement. This could be put into bill language to be presented to the Labor and Employment Relations Committee.

Senator Blaylock said the subcommittee should state their basic ideas on how to proceed. He stated there are two bills because of the irreconcilable differences between the two groups. Senator Blaylock asked if the committee should put together a grey bill.

Senator Gage feels the committee members should state how the individual views this subject and concept. From previous testimony, Senator Gage feels case law has been given more credence than statutes concerning the cases being settled in the courts. Senator Gage feels everyone is under the opinion things have been too liberal concerning case law. His concern at this point is to overcome the liberal decisions. There is a need for an ultra-conservative statute in the law to off-set the liberalness of the court cases.

Senator Thayer stated he served on the Governor's Advisory Council. He wanted to carry a bill at the June 1986 Special Session which was basically the same as SB 330. The committee must never lose sight of the fund. The state fund is approximately \$100 million in the red. This insolvent fund is growing every day, and the longer we wait to rectify the situation, the worse it will get. Senator Thayer feels SB 330 is seven months late and \$50 million short. The Labor and Industry representatives, during the April 1986 hearings, were testifying they did not want Senator Thayer's bill introduced during the Special Session, and at the hearing on February 14, 1987, they testified for it. Senator Thayer does not feel either SB 330 or SB 315 solve the deficit problem; they will only allow us to survive a little longer. Senator Thayer reminded the committee Montana has one of the highest Workers' Compensation rates in the country. These high rates are driving businesses out of the state, and many employers are waiting for the outcome of this legislative session. Senator Thayer said every time a business leaves Montana or closes, it will probably drag four or five other small businesses down also. Senator Thayer gave an example of a trucking firm which employes 200 employees. This would also affect a tire shop, a gas station, and other people will also be affected. This entire situation will effect the tax revenue in Montana. Senator Thayer stated the committee has to decide on a new Workers' Compensation Reform law. One that is readable; one that people can settle in an expeditious manner and get the injured worker back in the work force as soon as possible. He feels SB 315 is the vehicle which addresses these concerns. If SB 330 is used, it will codify the case law that has been used the past few years. Senator Thayer feels the committee would be better off to start with a new bill, and that is a decision the committee will have to make. He discussed the design of a bill. Each part of a bill has to fit throughout the bill process. He doesn't think it is reasonable to take bits and pieces of the bills to form a new bill.

Senator Blaylock said he agrees with Senator Thayer and he was determined the Workers' Compensation system needed to be fixed. Senator Blaylock is deeply concerned that neither of the bills take care of the unfunded liability. He felt a grey bill would be the answer because it could answer the problem areas. One problem area is if the committee chooses the court or the proposed board concept. The other is a problem with the definition of injury. Senator Blaylock feels if we start with a grey bill, a decision could be made. He said there were 23 ideas both bills agree on, and this could be the beginning of the grey bill. A determination could then be made on the definition of injury. Senator Blaylock believes if the Workers' Compensation Court is retained, then

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the people have the option of going directly to the court. However, if it was put into the system where the cases could be settled before they got to court, this could be a possible way of substantial savings. We have to be careful so the court does not construe.

Senator Haffey stated he would not have consented to work on this subcommittee if he thought it would be a continuation of party political division. This issue is far too important for this type of division. He feels this committee can work toward a legitimate workable compromise. Senator Haffey feels to reach this compromise the members should not insist on any certain bill, as no interested party will get completely what they want. There will have to be a compromise from all who work on this project. Senator Haffey said he had asked at the February 14, 1987 hearing on SB 315 and SB 330, if the sponsors, the Workers' Compensation Division, the involved lawyers, and involved insurance agents could all work toward some common ground. This would mean the benefits won't be as high as certain parties hoped, and the premiums might not be as low as certain parties hoped. Everyone agrees the unfunded liability has to be solved, and this will be done to some extent now; however, the solution will not come from this committee.

Senator Haffey asked the committee if there should not be a state fund, and if it is an issue. Senator Gage stated concerning these two bills, it is not particularly an issue.

Senator Haffey said he received a response to the previous question from all parties involved. The response was that there should be a fund of last resort in this state since Workers' Compensation is mandatory as explained by Laury Lewis. Senator Haffey stated this has given him a sense of the committee. The grey bill might be the direction the committee should take. If this is the route we take, Mary McCue and Tom Gomez are prepared to put together a bill.

Senator Haffey asked Mr. Robinson to give his views on the progress made and to define the concepts. Mr. Robinson replied there were a number of areas with differences. They are 1) the court; 2) the definition of injury; 3) the language in SB 315 related to subrogation, 4) the cost of awards to successful claimants; 5) criteria for lump sums for permanent partial; 6) lump sums; and 7) rehabilitation. Mr. Robinson explained that No. 4, the cost of awards to successful claimants, is the out of pocket cost the attorney incurs while hearing the case for its claimant. These are costs for depositions, for additional medical evaluations,

telephone calls, and copies of all records. These costs can only be recovered by the claimant's attorney if the criteria is shown that the insurer is unreasonable.

Senator Haffey asked Mr. Robinson if these are the 7 areas of concern. Mr. Robinson replied he feels these are the problem points discussed at the SB 315 and SB 330 hearing.

Mr. Grosfield commented on the above issues also. He stated during the deliberation process with the Governor's Advisory Council, it was agreed something had to be done to lower rates, which means taking away benefits. There were several areas where benefits had been reduced, and those are set forth in SB 330. SB 315 accepts those reductions and does other things. Mr. Grosfield agrees with Mr. Robinson's list of areas that are viewed differently. Mr. Grosfield feels of the seven issues, there are three and one-half major areas. The issues as viewed by Mr. Grosfield are 1) the elimination of the court; 2) the definition of injury; 3) the combination of permanent partial and lump sums; and 4) matters concerning subrogation and rehabilitation of the successful claimants. Mr. Grosfield designated issue 4, concerning rehabilitation and subrogation to be a minor difference. Mr. Grosfield does not feel everyone is happy with the rehabilitation provisions, and hopefully, something can be worked out without a lot of controversy. This area needs to be streamlined a little more. The reason the area of subrogation was not addressed by the Governor's Advisory Council at that time was because of a supreme court opinion which negated the Advisory Council from proceeding due to a decision on cases formed from constitutional grounds. This prevented a Workers' Compensation insurer from taking his full subrogation interest as provided by statute. The basis for this decision was the constitutional provision which has now been changed. If the law that now exists is reinstated prior to the decision rendered by the supreme court, this is what SB 315 does. Then, it will provide for whole subrogation by the Workers' Compensation insurer. Subrogation only applies when a third party caused the accident, and this happens in 10-15% of the cases. In specific cases involving serious injuries, the subrogation proposal, as drafted in SB 315, could provide a fairly significant recovery which goes back to the Workers' Compensation insurer and has the effect of lowering the cost of Workers' Compensation insurance. In very few cases is this a meaningful provision. This area could provide additional cost savings. In the area awarded to successful claimants, the Advisory Council amended the current law, which provides for automatic payment of costs and attorney fees to a successful claimant. The Advisory Council stated the claimant had to prove the insurance company

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acted unreasonably in adjusting the case before the award of costs and attorney fees. This would cut back 8% of all awards of attorney fees. Few cases go to decision before the Workers' Compensation Court. Only 100 cases per year have been tried in the court in the last five years. The Advisory Council stated a successful claimant should recover his costs automatically when they win. These costs can vary from \$300 to \$5,000, depending on the complexity of the case. The high cost cases involve expensive medical depositions which some physicians charge as much as \$1,500. Mr. Grosfield feels in the entire scheme, this is not a real significant issue. Mr. Grosfield stated he has heard a concern from the division that cases are entering the courts too quickly in regard to permanent and partial disability benefits. Mr. Grosfield explained that the lawyer's concern while representing a claimant is a fair, independent review, and this is a major concern with SB 315. He feels creating a buffer between the stage of dispute and the stage of court would cut down on many cases going to court. Some type of mandatory non-binding arbitration system should be provided. One party may demand the division set up a system to get the parties in to talk and resolve the issues before going in to court. Mr. Grosfield's opinion is a fair number of cases could be resolved in this manner. A person from the division would be the mediator and would order the parties together, listen to both sides, review the medical depositions, and listen to all the hearsay. The mediatory could, after hearing all testimony of the people involved, resolve the case at that point. Mr. Grosfield does not feel this proceeding should be a formal recorded proceeding, or that an official decision should be rendered by the division. The federal system in Montana orders the parties going to a jury or judge trial to a magistracy, who is a former Montana judge. In the federal system the parties are ordered to go to a settlement conference and the judge hears both sides of testimony. The judge then gives his view of the case to the involved parties and asks them if they want to go through the expense and trouble of the court process. The judge also gives the parties the option of settling their case. Many cases are settled through this process. Mr. Grosfield feels this type of buffer would solve the division's concerns and would eliminate a number of cases, but it would still provide the protection of an independent review. This system would also provide a savings for the Workers' Compensation Court.

Senator Thayer asked Mr. Grosfield if the court is an appellate review that would just deal with the facts before the arbitrators. Mr. Grosfield replied no, he would not see it as an appellate review because it would not be an appeal from a mandatory non-binding arbitration. No record would be

kept at the first level. It would delay the process before the parties could get to court and it would not be an appeal on the record. If the parties could not agree, then they would go to court.

Senator Thayer asked Mr. Grosfield why the appeal would not go on record, and if this would not be the same third party assistance. Mr. Grosfield replied he is not suggesting the arbitration proposal be a formalized detailed system. The average Workers' Compensation Court case takes approximately six to eight hours to try. With the mandatory non-binding arbitration system, a division person reviews the file, the parties sit down without the expense of depositions and discuss what will be presented in court. The medical testimony will be reviewed carefully and the medical reports can give a good estimation of what the deposition will say. In a formal hearing the parties need formal deposition or the information is considered to be hearsay. Mr. Grosfield's concern of the mandatory non-binding system being formalized and then appealing to the Workers' Compensation Court, is that there would be no independent review. If this process is binding and formalized, the division will be deciding the first issue and Mr. Grosfield does not think it would be right. He would like to see the issue decided by someone independent.

Senator Haffey asked Mr. Grosfield about the need to have an injured worker talk to the provider of insurance on their own. He asked where the attorney fits into the mandatory but non-binding arbitration. Mr. Grosfield replied, it could be written into the law during the non-binding process. The insurance company could talk to the injured worker without representation. In a formalized, contested proceeding, a corporation has to be represented by an attorney; a claimant can represent himself. If a claimant was represented by an attorney, the attorney would have to continue representing the claimant even during the non-binding arbitration. It could be written into the law that an insurance company would not have to be represented, which would save insurance costs. If a claimant is represented by an attorney, the attorney would have to be involved and the attorney would also have to represent the claimant at the non-binding arbitration system. If the claimant is not represented by an attorney, this process could provide a great deal of protection because the division representative would be there to protect the nonrepresented claimant. If an insurance adjuster was present who had a sophisticated knowledge of the law, they could overwhelm a claimant. A division mediator, who also has a sophisticated knowledge of the law, would be there to protect the system of

which the claimant is a part, and this would put the insurance adjuster and the claimant on equal terms.

Senator Haffey asked if having an attorney present is an issue in terms of the suggested mandatory non-binding buffer process between the time of the injury and when it would become a formal proceeding. Mr. Grosfield replied he does not understand how an attorney can be removed from being involved. The attorney is obligated to protect his client. In most cases that go to a contested case hearing, the claimant is represented by counsel because the counsel understands the system and the issues. The claimant not represented does not know what direction to take, and from the practical standpoint, there are not many unrepresented claimants.

Senator Blaylock said this is an idea the committee should consider. He feels if the claimant wants an attorney present at any step, it should be allowed. To give the claimant a fair hearing, an attorney should be present.

Senator Van Valkenburg stated in resolving the overall dispute, the most important issue, if we are going to unite the parties, is the overall cost. Concerning the subject of lawyer involvement in a precourt setting, Senator Van Valkenburg said the way to help this system work would be to take away the financial incentives to go beyond the precourt setting. If we can structure an arbitration setting which holds out the financial incentives, then there can be a reduction of cost and we can facilitate the process of settling cases without litigation. Prior to submitting the Governor's Bill, the division looked at some other alternatives that modeled some things done in other areas of Labor and Industry and mediation.

Mr. Bob Robinson stated the division looked at employment insurance, the Human Rights Commission, and how other states handled this situation. The results were an appeal step with a hearing held before. In most states if there is a Workers' Compensation benefit dispute, there is a hearing, the case is developed, issues are laid out, and a decision is made. If this committee decides to maintain the Workers' Compensation Court or maintain a board, then there should be earlier decisions. Mr. Robinson suggest a record should be developed and the record could be appealed to the court. The record for the Board of Industrial Insurers goes to the district court, then to the supreme court. He suggests one of these steps may need to be eliminated. A hearing could be appealed to the court and then to the supreme court and the important issue would be an objective and unbiased hearing. The Compliance Bureau in the division would be unbiased. However, it has been suggested it is not an unbiased department.

Senator Haffey asked Mr. Robinson about the impartiality of the mandatory but non-binding arbitration where a record is not developed and the opportunity for a pre-formal interaction between the claimant and the insurer is not controlled by litigation. He asked if a mandatory non-binding arbitration without the record appears to be developable. Mr. Robinson stated this is a good suggestion and the division feels the board and courts should be an appeal system. Senator Haffey clarified the system by explaining the process might stop at mediation and if it doesn't, then the parties would go to the formal process. He suggested this concept be put into language for the grey bill.

Senator Gage asked Mr. Grosfield if he anticipated a person being the mediator or three people being the mediators during this process. Mr. Grosfield stated it would be left to the division's discretion. Senator Gage asked Mr. Grosfield what would happen if three people were involved in the mediation process and they gave a unanimous decision that the parties would go to the supreme court. If they did not give a unanimous decision, then the next step would be to appeal to the courts. Mr. Grosfield replied he would leave the structure decision to the division. However, if there were three people hearing a major case in unanimity, it would have a powerful influence on the outcome of a resolution.

Mr. Robinson said he had not considered three people being the arbitrators; his thought was there would be one person as the mediator for the non-binding arbitrator. He feels it would be a waste of resources to have three people. There would be many claimants at this first level and the division does not have the resources for two or three teams of three members. The division would be better financially to have three people handle three individual claims.

Senator Haffey asked how the mediator would be chosen. Mr. Robinson stated the person would be chosen from the Compliance Bureau.

Senator Williams asked Senator Van Valkenburg if this bill has to be out of committee by Friday, February 20, 1987. Senator Van Valkenburg replied it has to be out of committee by Friday at the latest. He explained to Senator Williams that there will only be a need for fine-tuning, not major revisions. Senator Van Valkenburg stated if the subcommittee is not finished by Friday, but it is agreed the committee is making progress for a solution to this problem, he feels there would be support from the House to obtain a suspension

of the rules from the House. Senator Van Valkenburg has discussed this subject with House members Clyde Smith and Jerry Driscoll, and they have indicated their support. Senator Van Valkenburg feels this bill has to be done right.

Senator Williams asked Senator Van Valkenburg what length of time he is referring to for a suspension. Senator Van Valkenburg feels deadlines are a good thing because it forces people to make decisions. If the committee is given too much time, it could go on until the next deadline. Senator Van Valkenburg suggests the committee work hard, and if more time is needed, then we can get more time.

Senator Haffey feels this discussion is leading to a developable concept where language could be drafted into a bill. This language would be a first stop place that would not control the rest of the process. This might address impartiality, extent of involvement of attorneys, and the need to go to a court or a board. Senator Haffey said if there is no objection, Mr. Robinson, Mr. Grosfield, Ms. Mary McCue and Mr. Tom Gomez will work on the language. Senator Haffey asked if this would be a step forward on the discussion. Mr. Robinson replied yes it would.

Mr. Karl Englund wanted to remind the committee that in both bills there is procedure which requires a detailed demand on the other side before a person goes to court.

Senator Haffey said there are two words to be understood. The words are mandatory and non-binding. Mandatory means you have to do it and it might be the only stop a claimant makes. It is non binding if there are other stops you have to make.

Mr. Grosfield said this concept is recognized in the medical malpractice area and it is controlled by the Montana Medical Association. It is a mandatory non-binding system with three doctors and three lawyers who listen to cases. The statute provides if a claimant pursues a medical malpractice case, the panel is mandatory. Anything said during this panel cannot be used in court and the record is destroyed. In a medical malpractice issue, the claimant and the defense present their case to the panel. The major number of medical malpractice cases are decided at the point of this panel. Thus, there are very few medical malpractice cases in the state of Montana that go to court. This mandatory non-binding process is nothing new.

Senator Haffey stated subrogation, the cost of the claimant, and the rehabilitation concepts are the minor issues and could be defined in agreeable language.

Senator Thayer stated the employers of this state are very concerned with the issue of the Workers' Compensation Court. The employers believe the Workers' Compensation Court is the demise of the system. At the beginning of this session, it was hoped a system could be devised to offer employers a reduction of premium and we all realize it is not possible in either bill. Also, there is still the unfunded liability of \$100 million to solve. Further reductions were considered during the Governor's Council hearings.

Senator Blaylock asked Senator Thayer if the issue the employers are concerned about is the Workers' Compensation Court or the decisions of the supreme court. Senator Thayer stated he cannot answer this question, but he is mainly interested in the perception of his constituents to this concept.

Senator Blaylock stated he views Judge Timothy Reardon as an honest, fair judge and a competent person who understands this system. Senator Blaylock feels the committee should be very careful when considering the court removal just because the perception of the court is bad.

Senator Thayer also feels Judge Reardon is a competent person and the problems with the court are not Judge Reardon's fault. The perception of the court system is that it settled cases across the state, and has lead to a severe impact on the fund. Senator Thayer stated when he refers to the court, he is not referring to Judge Reardon.

Senator Gage stated the committee should remember the issues have to be considered by the House also.

Senator Thayer feels the committee should come back with proposals.

Senator Haffey suggested the involved parties work with Tom Gomez and Mary McCue to form language on the issues.

Mr. Robinson stated the division would be willing to lay out the issues in more detail.

Senator Haffey suggested there will have to be some give on both sides if this is ever to work.

Senator Gage stated if the involved parties do not come together with a compromise bill, we will have to choose either SB 315 or SB 330 in its present form.

Senator Haffey feels if a compromise is not reached, it would be a disservice to the state and a discredit to the Labor and Employment Relations Committee.

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Senator Haffey suggested using a grey bill as the starting point of fine-tuning the two bills. Mary McCue agreed the grey bill would be the easier route.

ADJOURNMENT: There being no further business to come before this subcommittee, the hearing adjourned at 10:00 a.m.



SENATOR JACK HAFLEY, SUBCOMMITTEE CHAIR

jr

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS SUBCOMMITTEE
MONTANA STATE SENATE

February 18, 1987 P.M.

The second meeting of the Labor and Employment Relations Subcommittee was called to order by Chairman Haffey on February 18, 1987, at 6:50 P.M. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 315 AND SENATE BILL 330:

Senator Haffey explained that at the first meeting of the Subcommittee, a group of interested parties were asked to address several issues. The issues were, the possibility of a buffer group or a mandatory non-binding arbitration vehicle; the cost of the claimant; the definition of injury; and permanent partial lump sums. Senator Haffey said there is now a list of issues (see Exhibit 1), and five of the issues are of possible agreement. He asked for a brief summary of these issues.

Mr. Grosfield stated they met in good faith and as impartially as possible reviewed the major issues. Mr. Grosfield explained issues 1 - 5 of Exhibit 1. Under issue 5 (b), Mr. Grosfield feels repetitive trauma should be a compensable industrial injury. If this is taken out, the exclusive remedy rule is being jeopardized. A fair compromise to this situation would be to put repetitive trauma under occupational disease. Under the occupational disease act there is no benefit for permanent partial disability. Claimants can only obtain benefits for temporary total disabilities and for permanent total disabilities. This would cut approximately half the benefits the repetitive trauma claimant would receive.

Senator Thayer asked how long the process represented in Issue 1 would take. Mr. Grosfield replied the first process would take approximately 45 days. Mr. Robinson stated it would take 15 days for the mediation process. Then the parties would be given 45 days for a cooling off period, or time to make a decision to the mediator's proposal. If a party was not acting in good faith during the process, the case would be sent back to the beginning and it would take another 45 days.

Senator Thayer asked Mr. Grosfield how long the court process would take to complete. Mr. Grosfield replied it generally takes at least 3 months before the pretrial proceedings are resolved. It would reach court 3 to 6 months after the petition is filed and it usually takes the court 2 to 4 months to issue a decision. If the case goes to supreme court, it would take 8 months more.

Senator Haffey asked if the time period is a turning point. Mr. Grosfield replied it has the effect of a cooling off period and the effect of forcing the parties to think about their case and to hear from an objective party. Mr. Grosfield feels this is a meaningful period of time.

Mr. Robinson stated the dispute resolution language from both bills would eliminate 40% or less of the cases.

Senator Blaylock asked Mr. George Wood to comment. Mr. Wood agrees the mediator system could eliminate a good number of cases, but he feels they have underestimated the number of cases to be resolved at the mediation process.

Senator Gage referred to incentives to settle at the stage of mediation. Mr. Grosfield replied it is tied with the other package. Mr. Karl Englund stated it is also tied in with unreason. If the claimant receives a reasonable offer from the mediation process, the claimant will not receive attorney fees unless the court states a party acted unreasonably. Then, there would be no economic incentive for the attorney to push a claimant to go further so he can get his fees paid by the division.

Senator Gage stated he has been discussing the Workers' Compensation problem with some people who were injured and have been through the Workers' Compensation process. Most of these people express concern of the Workers' Compensation process as being the judge, jury, and hangman, and they are not very happy with this idea. Senator Gage also talked to people from the State Auditor's office about their reaction to the mediator process. Their concern was that we are not getting away from the Division's control. Mr. Grosfield replied there would be two potential reviews by two independent reviewers. In most contested case proceedings there is only one person who hears the case, and they are the judge, the trier of fact, and the one who makes the final decision. That is the process under the current system. Under the proposed system in SB 315, the hearing officer is all powerful. We have to put faith in the people who are appointed to these positions.

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Mr. George Wood asked Mr. Robinson if he wanted the mediator in his department. Mr. Robinson replied a hearing officer would be better off not being in the Workers' Compensation Division, but a mediator would not be a problem in the division. Mr. Grosfield explained he has enough faith in the mediation process and the division personnel that he would not object to them hearing it. They may have to consider that one party could ask for a mediator from outside the division. Senator Haffey asked Mr. Robinson and Mr. Grosfield if there was a problem with having the mediator within the division. Mr. Robinson explained the mediator would not be a judge or a jury, but the mediator would be a facilitator who is very familiar with the Workers' Compensation.

Senator Thayer asked Mr. Grosfield if there is a disincentive in the proposed system so an attorney would not push a claimant along into a second mediation for the purpose of obtaining a larger fee, when the claimant has been offered a reasonable offer. The attorneys would be under the new rules of only being paid for the portion over and above the offer. Mr. Grosfield replied that is correct, and there should not be any incentive for the attorney to ignore the mediation proceedings and push the claimant into court.

Senator Thayer asked Mr. Grosfield if there are hourly wages included in the court costs. Mr. Grosfield replied the court costs include the cost of medical depositions, private investigators, filing fees and travel costs for witnesses. Mr. Grosfield stated he was discussing the court costs with Mr. George Wood. Mr. Grosfield estimated the cost to be \$500 - \$1,000 and Mr. Wood estimated the cost to be \$500. If you look at the current cases that go to Workers' Compensation Court for a decision, there are approximately 100 cases per year. The mediation process will drop the number of cases going to the court. You will be looking at 50-70 cases per year going to the courts, and you would multiply these cases by \$500. Considering the entire scheme of Workers' Compensation, this amount is a relatively low number.

Ms. Bonnie Tippy, representing the Alliance for American Insurers, asked the committee if they would like the help of Mr. Bill Molman concerning SB 315.

Senator Blaylock stated he read Mr. Molman's critique of SB 315 and found it to be very good, and would be glad to have his input.

Senator Thayer stated he does not have any serious objections to his helping the committee, but Mr. Molman should be aware of the changes already proposed.

Senator Gage stated Mr. Molman's comments were interesting and he could do nothing but help.

Mr. Gene Huntington stated the time problem is a concern and with another person adding more issues there might not be enough time to address the present issues.

Mr. Wood stated he respects Mr. Molman's expertise, but after participating in today's discussion with the quick pace movement, he feels the issues can be resolved by the people who are working on them now.

Mr. Keith Olson agreed with Mr. Wood's statement.

Senator Van Valkenburg stated he is assuming a Workers' Compensation bill will be brought out of the Senate by the 45th day. He is determined to see this happen and the leadership of the Senate will do all they can to help get this bill onto the Senate floor and passed through to the third reading.

Senator Thayer stated Senator Lynch has pledged the full cooperation of the Labor and Employment Relations Committee. Senator Haffey expects the full Labor and Employment Relations Committee will meet on Friday, February 20, 1987 to receive the work product and a recommendation from the subcommittee.

Senator Haffey suggested a phone update for Mr. Molman and if he has any comments he can give them over the phone.

Senator Gage reminded the subcommittee this bill also has to go through the House and if any problems arise they can also be handled in the House.

Mr. Bob Robinson explained issues 6 - 10 are issues which were not agreed upon (see Exhibit 1). Issue 6: The language included in the bill that speaks to aggravation of a pre-existing condition has changed the burden of proof to be more probable. Mr. Grosfield's position has been the language in the body of the bill probably handles the heart attack language which occurs in the work place or claimed to have occurred in the work place. The doctor would have to state the burden of proof would be more probably than not the heart attack was caused by an event on the job.

Senator Gage explained the concern of the injured people he talked to concerning this subject. In many instances doctors are brought in who have no knowledge of the injured worker's injuries. Mr. Robinson stated the worker has the right for first choice of a physician.

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Senator Haffey asked Mr. Robinson to clarify Issue 6. Mr. Robinson explained it comes from SB 315, page 29, lines 20 to the bottom of the page. This section will be left in the bill. The language on page 30, lines 1 through 6 will be deleted. Mr. Grosfield explained the committee has to be concerned about the exclusive remedy rule. Generally statutes are written in general terms and the reason they are written this way is to protect the exclusive remedy rule. The more specific language added, the greater the danger of violating that rule.

Mr. Grosfield does not feel emotional or mental stress language should be in this section because it threatens the exclusive remedy rule; however, this will just have to be determined by a court at some later date. The heart language would be better off if the specific situation was not addressed in the definition of injury. Mr. Grosfield explained he has tried many cardiac cases and claimant attorneys now have a fighting chance. The reason for the chance is the possibility rule. It is not a good rule from the standpoint of jurisprudence, but it is a good rule from the standpoint of the claimant. Mr. Grosfield assured the committee that that language will prevent most attorneys from even agreeing to represent a claimant in those areas.

Senator Gage asked Mr. Grosfield if it is determined employers will be covered under the Workers' Compensation laws. Mr. Grosfield replied Montana has a mandatory law that employers carry Workers' Compensation and claimants have no choice but to recover under Workers' Compensation. The exclusive remedy rule simply states if you are covered by Workers' Compensation by law, then you cannot sue your employer for injuries covered under the law.

Senator Blaylock asked Mr. Grosfield about his concern of putting this language into the bill. Mr. Grosfield feels this language should be stricken or the employer will be taking a chance.

Senator Haffey asked Mr. Robinson if this issue has been agreed on but there is still a risk factor. Mr. Robinson replied his legal counsel does not see the risk because the employer has to be proven negligent in order to be liable. Mr. Grosfield disagreed. In the tort area, negligence is a nebulous area, and you can proceed in tort and fight the battle and someone will win and someone will lose. Mr. Grosfield's concern in the stress area is by excluding it in the definition, you have not given the claimant the opportunity to proceed in court.

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Mr. Robinson explained Issue 7: SB 330 provides for lump sum benefits as means for settling all cases, and SB 315 eliminates all lump settlements except for impairment awards. This issue involves whether or not lump sums could be included in the package of settling a case. A lump sum could only be authorized by mutual agreement. There could be no court orders for lump sum settlements. Also there could be a lump sum, but with limited court jurisdiction amounting to a certain number of weeks.

Issue 8: See exhibit 1.

Issue 9: See exhibit 1. Mr. Robinson explained the basic concept of the rehab language and the return to work philosophy is included in both bills, but the language in SB 315 has more control and places more burden on the insurer. The insurer is encouraged to begin rehabilitation immediately or they will be penalized if they wait. Mr. Robinson feels SB 315 is much more refined and more direct.

Issue 10: SB 315 has 500 weeks of maximum benefits and SB 330 has 350 weeks of maximum benefits. SB 315 takes someone with a minor injury, who is eligible for benefits as long as there is documented wage loss. The division recommended the benefits be maintained at the status they are currently, but there will be a change on how they are paid out.

Mr. Robinson stated Issues 1 through 5 are at the point of agreement for the people involved in discussing the issues, but the subcommittee has to come to an actual agreement. Issues 6 through 10 are points not in agreement to the people involved in the discussions, and these are also the subcommittee's responsibility.

Mr. Grosfield stated he agrees with Mr. Robinson's analysis, but that Issue 9 should probably be added to the top category of those already agreed on. Mr. Grosfield feels the issues that still need additional work are Issues 6, 7, 8 and 10. These can be considered as a group in the lump sum area and especially in the permanent partial area. Mr. Grosfield's preference is the parties have the opportunity to discuss a settlement of their case; however, the parties would be precluded from proceeding to arbitration or to the court because neither would have jurisdiction. Mr. Grosfield would like to see the court have jurisdiction over a smaller amount, a figure which could be reached and agreed on. Then, the claimant with a dispute could possibly get a smaller portion of their entitlement to a lump sum. The lump sums for the permanent total benefits the proposal under SB 315

allows the claimant to receive is up to \$20,000. Mr. Grosfield would prefer the parties be entitled to negotiate an amount in excess of \$20,000.

Mr. Grosfield feels Issue 10, the permanent partial benefits, is the area that has to be looked at for cost savings. He also feels Issue 7 and 10 could be tied together. Consideration should be given to reducing the maximum recovery because this is where money can be saved in the least important benefit to the injured worker.

Senator Haffey asked Mr. Grosfield to give an explanation of how Issues 7 and 10 might work together. Mr. Grosfield explained no claimant could get more than 400 weeks for an injury in the permanent partial category. The court would be precluded to force payment up to 400 weeks and could hear arguments on bonafide issues where there are disputes between insurers and the claimant. The parties would go through the mediation process and if they cannot come to an agreement the parties would go to court. The statute would specifically state the court could grant a lump sum up to a set amount. The court agrees with the claimant and the court would award an amount up to 200 weeks. Senator Haffey asked Mr. Grosfield how this is related to the release. Mr. Grosfield stated the court order does not provide a release; however, once the court awards an amount it takes away from the 400 weeks of benefits. If the court awarded 150 weeks of permanent partial benefits, the claimant would only be allowed 250 weeks of potential recovery. Mr. Robinson stated this is a point where there is a difference of opinion. In SB 315 under the permanent partial benefits the claimant is eligible for a lump sum settlement at the time he reaches maximum healing and has an impairment rating. Also, SB 315 would pay the rest of the benefits based on actual documented wage loss. A limited lump sum ordered by the court or by the mediator would force the insurer to pay some portion of a future wage loss which may not exist.

Mr. Robinson said in Issue 8, lump sums or permanent total benefits do occur now and the reason they occur is because there is no cost of living adjustment for the individual over his life span. There is a cost of living adjustment in both bills so there no longer is a need for lump sum settlements under permanent total impairments. A claimant receiving permanent total benefits generally will not be able to return to work and there is some trustee responsibility to the claimant by the division and the insurers. It has been the opinion of Workers' Compensation experts that lump sums generally do not go where they were intended in many cases. The recipient of the lump sum is often not the ultimate beneficiary. The

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division has strong feelings regarding the lump sums in the permanent total categories, especially if there is a beginning of a cost of living adjustment.

Senator Gage asked Mr. Robinson if an award is made for an impairment, is that a total payoff for the impairment. Mr. Robinson stated in SB 315 it was proposed if a claimant had a 20% loss of body function, then they are entitled to 20% of 500 weeks benefits, which can be paid weekly or in a lump sum discount.

Senator Gage asked what percentage of the claims that go to court are in the permanent partial category. Mr. Robinson replied the majority of injuries are provided medical help to help the claimant return to work. The permanent total injuries are less than 2% of the cases.

Mr. Grosfield suggested under the permanent partial concept, they agree with the division's payment provision for permanent partial and remove the indemnity award. He asked if an agreement could be reached and the parties could resolve their case without the order of the court and a possible level of court jurisdiction. This would be throwing out a major concession, which is removing permanent partial indemnity awards, but in turn we would like the court to have some limited jurisdiction to award a lump sum when the insurance liability is reasonably clear and when a claimant is in need of a lump sum. This would have to be written into the law. Mr. Grosfield feels the division should have the final approval on any settlement and with this control there should not be any abuses that some people feel currently exist.

Mr. Robinson stated the division is not very comfortable with the idea of limited court jurisdiction, but maybe the criteria of lump sum settlements in SB 315 could be used. This criteria pays for the accumulated bills during the permanent or temporary disabled time.

Senator Blaylock asked Mr. Robinson if he agreed with Mr. Grosfield's statement that removing the permanent partial indemnity awards is a major concession. Mr. Robinson replied that it depends on which bill you are conceding. If you are looking at SB 315, it would not be much of a concession. However, if you are looking at the current law, or SB 330, then it would be considered a major concession.

Senator Haffey asked Mr. Grosfield if it was put into a bill and became law, would it become a major step in controlling costs and what injustice would it do to the injured worker.

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Mr. Grosfield explained there is a need for lump sum resolution cases because injured workers earning between \$25,000 and \$40,000 live a life style built around this salary. Families spend what they earn and this puts them at a certain financial level. Currently the maximum total disability rate is \$15,000 a year. These families can drop their living standard some, but they cannot do away with their house, cars, or other financial obligations. During the period of temporary total disability, a person can get into deep financial trouble, and that affects the individual and the family psychologically, which usually leads to counseling. The impairment ratings suggested by Mr. Robinson are small and the amount paid to the high-income worker is not sufficient to take care of the financial crisis he has gotten into while on temporary total disability benefits. Mr. Grosfield feels if they are giving up the indemnity awards, then the alternative should be a limited jurisdiction within the court to hear the issues.

Senator Haffey asked if the issues raised on labor, market and wage definition are at a point of agreement. Mr. Grosfield replied he had discussed the issues with Mr. Jim Murphy and they agreed there are details that could be worked out. He feels the main issues are being addressed.

Senator Gage asked if the involved people are confident we are at a point where the fund will carry itself.

Mr. Robinson replied the division is as confident as they can be with a law that leaves some to interpretation. Issues 1 through 5 are not considered high dollar cost items, but Issues 6 through 10 are considered high dollar cost items.

Senator Haffey explained that language is being written for Issues 1 - 5 by Ms. Jan VanRiper, Ms. Mary McCue, and Tom Gomez. The disagreement with Issue 6 is the extent of exposure and risk on the stress language. Issue 6 is related to Issue 5 in terms of definitions of injury and accident. Senator Haffey suggested tentative language for the stress as SB 315 proposes and eliminating the heart and stroke language. Mr. Robinson stated there is some disagreement on the heart and stroke language. In Issues 7 and 10 the new language would eliminate indemnity, and the total would be less 500 weeks for permanent partial benefits. Mr. Robinson stated a concern with reducing the maximum number of weeks for a claimant with a serious injury. Mr. Grosfield stated he has always had a problem with the wage loss system. To have a true wage loss system, in theory, it should be open ended, but due to practical matters in 1915, body parts were arbitrarily labeled in terms of number of weeks. Senator

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Haffey suggested language being written should state the involvement of the court to a certain extent, and the reduction of maximum permanent partial benefits which Senator Thayer suggested. This would lead to a more solvent system. Mr. Robinson stated the division is still not comfortable paying lump sums for something that might occur. He would rather pay when it occurs. Senator Haffey asked Mr. Robinson if there is a disagreement with the difference between mutual agreement and no court orders and limited court jurisdiction. Mr. Robinson replied yes there was a disagreement.

Senator Haffey asked if Issue 7 and Issue 10 relate, and should Issue 8 be an independent Issue. Mr. Robinson stated Issue 8 should be considered a separate issue.

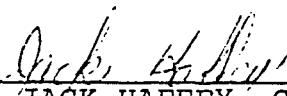
Senator Blaylock asked Mr. George Wood for his views on the limited jurisdiction of the court. Mr. Wood stated the lump sum has never been an issue with him.

Senator Gage suggested when working on the language they leave the amounts for lump sums and number of weeks blank. Senator Haffey explained the language would be written for relating indemnity, court involvement and maximum weeks.

Senator Williams stated the equation will have to reflect back on the system to support itself without any increase in Workers' Compensation. Senator Haffey stated it is directed at not raising the rates for employers.

Senator Haffey asked Senator Gage if it was agreeable to him if in the draft language they use the assumed numbers. Senator Haffey stated the drafting of new language will take most of the day and the subcommittee will meet tomorrow, February 19 on adjournment.

ADJOURNMENT: There being no further business to come before this committee, the hearing adjourned at 8:20 p.m.



SENATOR JACK HAFLEY, Chairman

jr

POSSIBLE AGREEMENT

- ISSUE #1 Maintain Court with mandatory non-binding arbitration. (See attached)
- ISSUE #2 Provide court costs to claimant if he prevails.
- ISSUE #3 Maintain subrogation language in SB 315.
- ISSUE #4 Insert impairment rating by treating physician.
Panel system to resolve dispute without mediation.
- ISSUE #5 Definition of "injury."
- a.) Include language on unusual strain.
 - b.) Include repetitive trauma in occupational disease law.

OTHER ITEMS

- ISSUE #6 Maintain stress and eliminate heart attack and stroke language.
- ISSUE #7 Lump sums for permanent partial wage supplement benefits.
- Release insurer liability.
 - Mutual agreement--no court orders.
 - Limited court jurisdiction.
- ISSUE #8 Lump sums for permanent total benefits.
- Mutual agreement.
 - No court order.
- ISSUE #9 Rehab to be refined and/or clarified before 1989.
- ISSUE #10 Consider reducing maximum permanent partial award. ^{benefits.}

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/12/87
BILL NO. SB 315

MANDATORY--NON-BINDING Arbitration

- 1.) With or without representation.
- 2.) Mediator hears dispute informally.
- 3.) Mediator reviews Division file for the case and has authority to receive any additional documentation or evidence either side provides and shall hear arguments presented by either party.
- 4.) Argument should include all evidence either party would present to the Workers' Compensation Court should the case go to hearing.
- 5.) After presentation of all information, the arbitrator shall recommend a solution and present such to both parties within a reasonable time. The parties must notify the mediator within 45 days of the mailing of his report whether or not the dispute has been resolved.
- 6.) The mediator shall make every reasonable effort to resolve the dispute.
- 7.) Both parties must make a bona fide effort to present all information and argument to the mediator, including a bona fide effort to resolve the dispute.
- 8.) In the event the dispute is not resolved, the mediator shall advise the Workers' Compensation Court in writing of his decision as to whether each party fairly presented the case as outlined above and fairly attempted to resolve the issue.
- 9.) The mediator shall also advise the Court whether, in the mediator's opinion, a bona fide dispute exists and whether or not the parties fairly attempted to resolve the dispute.
- 10.) If the mediator determines that either or both parties did not fairly present their case or did not make a bona fide effort to resolve the issue, the Court shall summon all parties including the mediator, shall review the proceedings that took place, and determine whether the mediator's conclusion is correct.
- 11.) Should the Court confirm the mediator's report, the parties are ordered back to mediator for further proceedings in an attempt to resolve the dispute.
- 12.) If a resolution is not obtained after the second proceeding, the parties may proceed to the Court for formal resolution of the dispute.

SEATTLE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/2/87
BILL NO. 23 3/5

STATEMENT OF INTENT

____ Bill No. SR 315

A statement of intent is required for this bill because of the following:

(1) section 2: The newly created board of industrial insurance is granted the authority in this bill to adopt rules that prescribe the procedures to be followed by persons appealing to the board. Also, if the board finds it necessary to adopt policies, those policies should be formally adopted to give affected parties notice. It is the legislature's intent to give the board the authority to adopt rules necessary to provide for efficient and orderly procedure before the board and to publish those rules.

(2) section 4: This bill removes original jurisdiction to hear disputes concerning workers' compensation and occupational disease cases from the workers' compensation court which is repealed in this bill to department hearing examiners and the division of workers' compensation. It is the legislature's intent that the division adopt the rules necessary for efficient and orderly procedure before the hearing examiners.

(3) section 19: The division of workers' compensation needs to adopt rules to efficiently and fairly implement the Workers' Compensation Act. There are numerous references throughout the act to rules, rates, procedures, and forms to be prescribed by the division. (e.g., 39-71-208, 39-71-307, 39-71-410, 39-71-604, 39-71-2102, 39-71-2303, and 39-71-2304) However, there is no explicit statutory grant of rulemaking authority in the chapter.

(4) The Montana supreme court, in Garland v. The Anaconda Company, 177 Mont. 240, 581 P.2d 431 (1978), tacitly recognized 39-71-203 as a general grant of rulemaking authority. To preserve the division's rulemaking authority and extend it to the amendments promulgated in this bill, the legislature explicitly

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS SUBCOMMITTEE
MONTANA STATE SENATE

February 19, 1987

The third meeting of the Labor and Employment Relations Subcommittee was called to order by Chairman Haffey on February 19, 1987, at 6:30 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 315 AND SENATE BILL NO. 330: Senator Haffey stated the subcommittee and interested parties would discuss the possible agreements. (See exhibit 1) Ms. Jan VanRiper began the discussion with Issue 2. (See exhibit 2) She explained the drafting process and said it was almost impossible not to work from one of the bills since you have to work in a context. In the case of Issue 2, she worked from SB 315. The additions and the eliminations of language are shown in Exhibits 1, 2 and 3.

Senator Van Valkenburg asked about Issue 4, page 2, and if the references concerning impairment ratings are consistent. Ms. VanRiper stated once you have obtained an impairment rating, the insurer has to start paying the award.

Mr. George Wood said he was under the impression impairment awards were not going to be adopted. Senator Haffey replied he did not recall making that statement. Senator Thayer said he heard this in the halls. Senator Blaylock asked Mr. Grosfield to explain what he had discussed concerning this subject at the last meeting. Mr. Grosfield explained the discussion was about "what ifs". The what ifs were if we took out the indemnity and accepted the division's proposal which would include an impairment award. If SB 330's approach was adopted it would not include an impairment award. Mr. Robinson stated the discussion on SB 330's lump sum award was that the impairment award was included as part of the negotiations.

Mr. Grosfield suggested the committee assume, for this discussion, the division's approach was adopted. Then there would be payment for an impairment award. Ms. VanRiper stated if there is not going to be an impairment award there would then be no need for an impairment panel.

Ms. VanRiper explained Issue 5 a (see Exhibit 2). She worked from the language in SB 315. Senator Thayer asked if unusual strain is defined. Mr. Grosfield replied unusual strain is defined in the current law. The court has stated the intent of putting that language in the law was to cover the incident that involves the usual work in the usual manner and having an unusual result. It is clearly stated by the court, and Mr. Grosfield doubts there would be any dispute on the definition of unusual strain.

Senator Gage asked Mr. Grosfield if other states have a different definition of unusual strain. Mr. Grosfield replied there are probably fifty different definitions of injury, but for the most part they all have the same meaning.

Ms. VanRiper explained Issue 5 b (see Exhibit 2). Ms. VanRiper incorporated the total definition of injury in the Workers' Compensation Act and omitted from that definition the requirement there be an accident. Mr. Robinson asked Ms. VanRiper what happens to the disease language. Ms. Mary McCue stated the word disease was accidentally dropped and they will return the disease language to the bill. Ms. VanRiper does not feel there is a need to add the disease language because a disease is an external or internal physical harm, but it is not something which occurs due to an accident. Ms. VanRiper feels the distinguishing characteristic is what caused it in terms of time. Ms. McCue asked Ms. VanRiper if there would be a problem to include the disease language. Ms. VanRiper stated if it is not acceptable we could come up with other language. Mr. Grosfield stated the language is very preceptive. Senator Blaylock asked Mr. Wood his views on this language. Mr. Wood said it appears to him there is more than repetitive trauma in the occupational disease law and it also states those conditions that are not the result of an injury. Mr. Wood asked if this language is too board. Ms. VanRiper stated the reason she preferred this language is because it clearly excluded stress from the Occupational Disease Act. An injury is defined in Section 39-71-119, MCA. Except for the subsection on accidents, this section specifically excludes stress. Ms. VanRiper's concern of the language written in SB 315 is adding repetitive trauma. There would then be a good argument that stress would be included in the Occupational Disease Act.

Senator Thayer asked Mr. Robinson if he was happy with the language in Issue 5. Mr. Robinson deferred to Mr. Grosfield. Mr. Grosfield stated by defining occupational disease, it cannot affect the definition of injury or the Workers' Compensation coverage. Ms. VanRiper stated the language

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referring to the term disease from Chapter 72 could be retained, but exclude the term injury. Mr. Grosfield stated he is satisfied with this issue.

Senator Thayer stated he discussed the mandatory non-binding mediation process with some of his constituents and they felt it might lead to problems. The problems described to Senator Thayer were the fear this process would be an effort in futility because the claimants would go through the motions, but would eventually end in court anyway. Senator Thayer would like to see a combination of SB 315 and SB 330 on the court issue, which would retain the Workers' Compensation Court, but the first step of mediation would have the authority to resolve and settle cases.

Senator Haffey reviewed the discussion on this issue from the previous meeting, and the conclusion was a knowledgeable person from the division would be a mediator.

Mr. Gene Huntington brought up a point from the previous meeting's discussion concerning the mediation court judge which may lead to some due process problem. Ms. Van Riper has concerns with the due process perspective under the original proposal. For example, a mediator comes to the conclusion a party has failed to bargain in good faith and this would be communicated to the judge. The parties would then have to go through the mediation process again because from the first meeting they communicated to the judge there was a potential problem with prejudicing the judge. The effect then would be the parties would have to go through another mediation process, which would take approximately 45 days. During this period the parties would not have the opportunity to dispute the findings of the mediator.

Mr. Grosfield feels there is merit in slowing down the process and forcing the parties to review their cases and to force the parties to present an informal case at much less cost. He said there may be a possible concern with due process, but feels language can be written to avoid this problem. The events of mediation process would be taken to the judge even though there is no record. The mediator would state his views of the process and it would be discovered if one of the parties did not cooperate or did not appear to resolve the issue; if there was a recalcitrant attorney who did not do the best job; or came late; or was not prepared; or feels they will not get a fair hearing. The effect would be concern from the judge on how the attorney operated during the mediation process. These actions could

prejudice the attorney's case when it comes to the merits and it is tried in court. However, Mr. Grosfield does not believe an attorney would act this way. Mr. Grosfield feels if a problem occurs and the bill goes into effect July 1, it would take until October or November before the case would get to court. It would take another 6-8 months to get the case tried and a decision rendered and there could then be an appeal on the supreme court ruling. By the time there is a decision made on the claim, and if the claimant was not given a due process at this level, the legislature would be back in session and the legislature could address it.

Senator Thayer asked Mr. Grosfield what would be the outcome if due process was a problem. Mr. Grosfield replied the effect would be if anything is declared unconstitutional, that part is thrown out and everything else remains. The effect would be the section that allows the mediator to make the determination that one or both of the parties did not act in good faith would be thrown out. The mediation process would be retained.

Senator Van Valkenburg stated keeping the Workers' Compensation Court as the finder of fact is important and if there is not agreement of this issue, then it could result in problems. Senator Haffey does not see the mediation process as a problem. Mr. Huntington replied this issue has to be resolved and he would like someone to convince him the due process will not be an issue.

Mr. Karl Englund does not feel a claimant's attorney would dare to go into the mediation process and be completely recalcitrant because there will be a judge only trial. The attorney would have to assume the mediator and the judge will be working close together. Even if there is no report, the mediator and the judge will discuss the case and the judge is the ultimate finder of fact.

Ms. Jan Van Riper does not feel the point of issue is whether or not a claimant's attorney will come in and be uncooperative during the mediation process. The issue is what if the mediator finds the claimant's attorney is uncooperative. Then what would the claimant's attorney do. Many claimant's attorneys would not stand for this and would probably take it to the supreme court.

Senator Van Valkenburg asked Ms. McCue and Ms. VanRiper if they considered that the Workers' Compensation Court is a statutory court and is a creature of the legislature. The Constitution discusses the difference between injuries in the

course of employment as opposed to other injuries. He asked if in this context, does the legislature have the right to establish something different in due process. Would the Constitution then require a tort action situation in district court. The due process in the Workers' Compensation Court permits the mediator to report to the judge. This bill would make a policy choice that a written report given to the judge does not prejudice the judge.

Ms. McCue asked Senator Van Valkenburg if he is referring to the provision in the Constitution which states a person has constitutional rights except when it comes to Workers' Compensation. Ms. McCue interpreted this to mean the remedies for injury to which the claimant is entitled. However, just because this is a Workers' Compensation area, the due process theory should not be forgotten. Ms. VanRiper stated we could veer away from traditional notion of due process. Ms. VanRiper feels it is important to raise these issues, but she feels the language could be drafted and it could be researched how far it can be changed within the constitutional limits. Senator Haffey stated he would like to see this issue researched to insure it will stand strong in the constitutional tests and due process.

Senator Thayer asked if there was another plan if the due process issue of mediation cannot be resolved. He asked Mr. Robinson to explain an alternative plan.

Mr. Robinson explained an administrative hearing, as proposed in SB 315, which would be the finder of fact and the initial recommendation.

Mr. Grosfield stated the concern of the issue of due process basically would involve the testimony of all parties, and in his opinion, the parties do have a due process hearing because all parties can speak freely and make comments.

Senator Haffey stated his preference would be to accept this mediation process language and the stress language and present it as part of the recommendation to the full committee.

Senator Thayer stated his constituents and other business and industry people consider the Workers' Compensation Court to be the problem. He feels this should be considered.

Mr. Don Allen asked if the mediation process could be explained. Ms. McCue stated it is written out in Exhibit 1. Senator Haffey explained the mediation process would stop the flow of cases that would go to court. He stated there was a shared judgment from Mr. Grosfield, Mr. Robinson and Mr. Wood that the mediation process would stop approximately 35-40% of the cases which might proceed to court.

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Senator Blaylock asked Ms. McCue if #10 of the Mandatory Non-binding Arbitration (see Exhibit 1) would meet the due process procedure. Ms. McCue stated she does not understand what is meant by #10 of the Mandatory Non-binding Arbitration. She does not feel there is criteria for this statement. Ms. McCue also brought up the issue of conflict of interest. If the mediators are working for the division, who is the insurer, as in Plan 3, and if the mediator makes a decision for a division employee, a co-worker, this would be a conflict of interest.

Senator Gage stated he feels it would be a big mistake if the mediators came from the division. Mr. Huntington feels the answer to this issue would be to have the mediators come from the Employment Relations Division or the Department of Labor. Mr. Grosfield feels the simple answer would be if either party requested an independent mediator, a mediator could be chosen from the Attorney General's Office, or another agency. Mr. Grosfield stated he would accept a mediator from the division and would not be concerned with a conflict of interest. Mr. Robinson feels there would be many attorneys who would be concerned about a conflict of interest if the mediator came from the division. Mr. Robinson feels the mediator should come from the Department of Labor's Employment Relations Office. Senator Haffey asked if someone from the Employment Relations Office would have the knowledge to handle this job.

Mr. Robinson stated an employee from the Employment Relations Office would have the basic knowledge, but would also have to develop that knowledge. He feels the person to be hired would probably come from the Workers' Compensation Department. Senator Gage said he is speaking from the point of view of the injured worker and they have expressed the need to be saved from the Workers' Compensation Division.

Senator Thayer asked Mr. Robinson and Mr. Huntington if they are satisfied due process is resolved. Mr. Huntington replied it was consistent with what was originally envisioned in SB 135.

Mr. Don Allen asked if there has been any thought given concerning the mediation process and having a three person group, appointed by the Governor, as the mediator. Senator Haffey explained this issue was discussed at the previous meeting in terms of complexity, knowledge and ability to handle the issue. Mr. Allen's concern is with a conversation between the hearing examiner and the judge and if this discussion would result in more problems. Mr. Allen feels it would be more difficult to prejudice the judge with a

three person panel than with a single mediator.

Mr. Grosfield believes any judge would hear the evidence and rule fairly on the merits, but in any trial setting an attorney can do something to upset the judge, which makes it more difficult for the attorney to present his case. Mr. Grosfield explained that trial lawyers are extremely careful to keep a good working relationship with the court. Language written would be beneficial in forcing attorneys to cooperate. Mr. George Wood stated it does not make a difference if there is an administrative board or the Workers' Compensation Court. If the judge is going to make the decision the attorney will do everything to have the judge on his side.

Ms. VanRiper explained Issue 6 (see Exhibit 2). Senator Thayer said he understood the heart attack and stroke language were to remain. Senator Haffey explained that the previous evening there was a lengthy discussion to draft an amendment to maintain the stress language and eliminate the heart attack and stroke language. Mr. Grosfield explained the discussion on Issue 6 to Senator Thayer.

Mr. Grosfield's concern is when any specific medical malady is combined in an injury definition, if this was excluded, would the exclusive rule be jeopardized, and expose the industry to potential civil litigations. The burden of proof requirement, which is agreed upon in both bills, will cut out almost all heart attack, stroke and instant pulmonary cases.

Mr. Robinson stated there is definitely a difference of opinion concerning this issue. He said there may not be a large number of cases, but heart attacks are an expensive item to the Workers' Compensation Division. Insurance agencies make agreements to buy out a case. The Workers' Compensation Division recently bought out a heart attack case for the amount of \$50,000. He said many of these cases are bought out before going to court.

Mr. Robinson mentioned a letter received from Mr. Mike McCarter, a Workers' Compensation Defense attorney. Mr. McCarter's letter discusses the definition of injury and the result of the definition of injury relative to the exclusive remedy rule. Mr. Robinson feels this letter emphasizes the overall view that leaving the heart attack language and the stroke language in the definition does not increase the liability to employers. Mr. Grosfield feels Mr. McCarter is saying it would open the employer to a potential case and that is in agreement with what Mr. Grosfield believes.

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The exclusive remedy rule prevents the filing of a case. It is one area of the law that is clear. The problem is if the potential for filing is allowed, then it would abolish the exclusive remedy rule in that area. Senator Haffey feels comfortable with maintaining the stress language and eliminating the heart attack language.

Senator Blaylock asked Mr. Robinson if, when the division bought out the heart attack case, that was the only option. Mr. Robinson stated there is some question whether there is liability. There is also the possibility the claimant's attorney will take the case to court. Thus, the division in effect pays the claimant so the case can be resolved.

Senator Thayer stated he is comfortable with leaving the heart attack and stroke language as it was. Senator Haffey stated the objectives for the subcommittee are to make progress by compromise. The issue to use the current statute as the frame of reference, placing stress in as not compensable and leaving the heart attack and stroke language as rewritten would be a reasonable compromise.

Senator Haffey stated he realized it is not SB 315 which makes both circumstances noncompensable. Jim Murphy stated that was not a correct statement as stress is excluded in SB 315. Senator Thayer was under the impression Mr. Grosfield stated he had no objections to leaving the language in its original form. Mr. Grosfield corrected Senator Thayer and stated he feels strongly about the change of the new language. Mr. Grosfield stated in SB 315, on page 40, line 20, the key issue creates the burden of proof in establishing aggravation of pre-existing conditions. There are two ways to establish a heart attack case. The first is by proving there was a severe blow to the chest, and the second is to prove there was aggravation of a pre-existing condition. Under current law the proof comes if a doctor will state it is possible the heart attack was caused by the physical condition of the job or stress aggravated the pre-existing heart condition. An attorney would then have a chance of establishing a defensible case. This language prevents the burden of proof as a possibility. Mr. Jim Murphy stated there are cases when a person has a heart attack due to a one time occurrence and a doctor will state it is a possibility the one occurrence triggered the heart attack. The question would then be if the heart attack was more probable or not caused by a one occurrence, and what about the primary cause such as 4 packs of cigarettes a day.

Senator Blaylock feels the heart attack language with the

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primary cause language should be in the bill. Senator Gage asked what would the difference in cost be if the stress language was eliminated and the heart attack and stroke language was maintained. Mr. Robinson feels it would make a significant difference. It would be much more expensive if stress was included in SB 315. Mr. George Wood stated the problems with the cost of stress benefits are great and the cost of heart attacks is not that significant.

Senator Haffey stated language should be written for Issues 1 - 5, Issue 6, and Issue 9 if there are no further questions for these issues. Mr. Robinson stated they are not that far apart on the views and if there is a potential problem it can be handled in the next legislative session. Ms. McCue asked if the language should be drafted from the language in SB 315. Mr. Grosfield stated he could assure the committee he will not be involved in a dispute concerning the rehabilitation language. Senator Haffey asked the involved parties if they can proceed to draft language. Senator Thayer suggested some of the matters not addressed by the subcommittee could be addressed by the House members. Senator Haffey stated he would like the full committee to receive a readable grey bill by the next day. Senator Thayer stated if the committee decides to use SB 315 and redo it to reflect the changes, then the grey bill would actually be SB 315 with amendments. Senator Haffey stated the number of the bill will be decided at another time.

Senator Blaylock asked Mr. Grosfield to explain indemnity awards. Mr. Grosfield explained under permanent partial disability there are two potential awards. Permanent partial disability means after you reach maximum healing and you have a permanent condition, it will be there the rest of claimant's life, and the condition will affect their employment. The claimant can then receive a permanent partial award. The current law provides a wage loss permanent partial award, which means if the claimant can demonstrate the salary he was able to earn after the injury is less than the salary the claimant can earn before the injury, then the claimant is entitled to an award of 2/3 the difference, subject to the maximum amount set by law. The claimant can receive the benefits under current law for whole body injury for up to 500 weeks. For an arm the benefit award is up to 280 weeks and for a hand the benefit award is up to 200 weeks. If the claimant cannot demonstrate a true wage loss but they can demonstrate a diminished ability to compete in the normal labor market in the future, then they are entitled to an indemnity award. This award under current law is based on age, education, type of work done in the past, and pain they will be suffering in the future. All of this is taken into

consideration and a negotiated figure is reached. Mr. Grosfield feels indemnity awards are fair and they provide an award for the life suffering of the person. He also feels the indemnity awards should remain in the law. SB 330 keeps this award but lowers the maximum recovery.

Senator Haffey believes the issue of permanent partial and indemnity awards is whether there is a role for indemnity awards or not; whether there are going to be lump sum changes in the current law; if there is a role for lump sums in the court or not; if lump sums will still be available under some circumstances; and if there is an issue on the maximum permanent partial award in terms of weeks. Senator Haffey asked Mr. Huntington if he had any comments on his summary. Mr. Huntington stated SB 315 is central to their proposal. Senator Haffey told Mr. Huntington he feels there are cases where an injured worker would be better off with the lump sum, and he asked if that was addressed in SB 315. Mr. Huntington stated the permanent partial award is allowed to be paid out however the injured worker would like to be paid. Mr. Huntington stated bi-weekly payments tend to be the rule in Montana. Mr. Grosfield stated impairment ratings are based on a study done by the American Medical Association. A recent study concluded there is no basis for the American Medical Association guide to impairments, and no one knows where they obtained their information. An impairment is a restriction of anatomical movement. Mr. Grosfield explained there is generally a 5% impairment for major back injuries. After a back injury, the person can move, but he cannot lift. A 5% impairment, which would be the standard, would amount to 25 weeks of benefits, which is approximately \$3,000-\$4,000. He said people in a high income bracket could get into a financial bind while they are in the healing stage and an impairment award would hardly be meaningful to them. Mr. Huntington stated there are cases with unusual circumstances. However, there has to be a balance.

Senator Thayer stated division members have told him one of the main reasons there is an unfunded liability in Montana, is due to the lump sums. Senator Thayer feels this area is being overlooked, and is too important an issue to be forgotten. Mr. Grosfield agreed with the point Senator Thayer made that there were problems. He suggested an approach at the last meeting that would address concerns for both sides. Mr. Grosfield does not feel the court should be able to grant large lump sums, and he suggested the court have limited jurisdiction and only be able to grant awards to a certain amount. This would resolve some of the claimant's problems. Mr. Grosfield feels this would be a fair compromise and there

would be substantial cost savings. Senator Thayer stated he understood Mr. Grosfield's views, but the discussions of the Governor's Advisory Council were centered around the unfunded liability. There may not be enough money to meet payrolls at the rate it is going. Senator Thayer said he does not know if the people understand the seriousness of the situation.

Senator Haffey stated he understood the gravity of the situation and that he had discussed the situation with Mr. Robinson and Mr. Huntington more than once.

Senator Blaylock stated when the Advisory Council was formed, the Governor said he wanted the problem solved but he wanted to remain "people sensitive". He suggested language be written that would award lump sums on the basis of need. He asked Mr. Robinson if this would cut down on costs. Mr. Robinson stated under a wage loss system when a claimant is advanced benefits, due to a court order, the problem lies with advancing more benefits than the claimant would have received through a biweekly award.

Senator Haffey asked Mr. Robinson how the committee would address the issue and if the claimant would be better off with the lump sum than receiving the bi-weekly benefits. Mr. Robinson stated many claimants are not at the high income level Mr. Grosfield referred to earlier. The insurer has a responsibility to the claimant and support should be given to the injured worker as long as there is a need, but benefits should not be given for a period of time longer than needed. Senator Haffey asked how this could be achieved through mutual agreement. Mr. Robinson stated the lump sum should be awarded only as the exception, not the rule, and only awarded in rare situations.

Senator Blaylock asked Mr. Wood for his viewpoint. Mr. Wood stated decisions are made by financial concerns. He said insurers feel lump sum awards, on a voluntary basis, are appropriate because they want to close cases.

Senator Haffey asked Mr. Grosfield to assume for this discussion, that there is a court, mediation process, definitions of injury, noncompensable stress language, and heart attack language with the primary cause. The mutual agreement is lump sums and the maximum permanent partial award remaining at 500 weeks and indemnity is out. Assume each item described has passed this committee. Where does this place the injured worker relative to where they are under current law, and knowing if we stay with the current law, the fund could reach a

billion dollar deficit. Mr. Grosfield stated compared to current law, it would be substantially different, primarily in the permanent partial area. The reason many lump sums are paid now is because indemnity awards exist. Take away indemnity award limits and there is not much reason to go to court. In the proposed system, the award granted by the judge would be discounted, and the judge would have to be clear that the insurance carrier has a continuing obligation to pay permanent partial benefits on a wage loss basis in the future. If that is not the situation and the judge has a question, he could not award a lump sum. This will force many claimants with severe financial problems, after the temporary total disability, into a situation of a hopeless financial condition. If there is not some type of remedy an attorney or an unrepresented claimant would have no place to turn. Senator Haffey stated the subcommittee could present the grey bill with a few unresolved issues, but he would prefer not to present it in that form.

Senator Williams feels it is not the purpose of the Workers' Compensation Act to provide injured workers to live the way there are accustomed.

Senator Van Valkenburg stated the division people are so driven by the unfunded liability that they do not have an open mind concerning this issue. The unfunded liability is a separate problem that the legislature has to responsibly address. However, the unfunded liability should not drive us in terms of this decision. Senator Van Valkenburg asked the subcommittee to review his statement before making a decision. Senator Williams stated his concern with this issue has nothing to do with the unfunded liability. Senator Williams stated he has addressed the issue many times and his concern is not with the unfunded liability but the cause of the unfunded liability.

Senator Thayer stated he does not feel SB 315 is discriminate against workers, and it was designed to aid an injured worker immediately. This bill eliminates fraud and abuse to the system while still taking care of the truly injured worker.

Senator Blaylock asked Mr. Robinson if the reason there is an unfunded liability was because lump sums were paid to workers who were not in need of it because they were rehabilitated. Mr. Robinson stated yes, because the division is paying for liabilities that really will not occur at a later date. Senator Blaylock asked Mr. Robinson what would be a reasonable award. Mr. Robinson stated there would have to be research done on each individual case, and the claims examiner could research each case. Senator Blaylock asked Mr. Robinson what was the maximum amount awarded for a lump sum. Mr. Robinson stated the maximum on the permanent partial benefit awards on a weekly basis is one half the state's average weekly

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wage, which is \$158. Senator Blaylock asked Mr. Robinson if a judge awards this amount for a year, would that put the fund into more jeopardy. Mr. Robinson replied he would have to check to find out the duration of partial benefits, but he would guess it would be more than a year. Mr. Grosfield stated the wage loss system without indemnities, is a hard question to answer.

Mr. Huntington stated in SB 315, the impairment can be paid and the amount varies with the case. Senator Gage asked if there is a possibility with limiting the amount of lump sums and limiting the amount of weeks. Mr. Grosfield explained if an injured worker was going to ask for more money through the lump sum awards, and if there was a limit, eventually they will hit the limit. In SB 330 there is protection against claimants returning for a lump sum because they have reached their limit. Senator Thayer stated the reason SB 315 did not propose lump sums was to resolve a case immediately. With lump sums most cases go to court. Senator Haffey suggested adding mutual agreements for lump sums might be helpful, leaving permanent partial at 500 weeks, and using the SB 315 language for permanent total. Mr. Huntington stated there needs to be a sense of perspective in terms of how people sensitive this bill would be. If we are compared to our neighboring states concerning a surtax and the possibility of mutual agreement, then this bill would put us equal or beyond in terms of being sensitive.

Senator Van Valkenburg disagreed with the comparison with other states and said there should be a frame of reference to our own state. Senator Haffey feels Senator Van Valkenburg made a good point. There are two legitimate reference points - what has been done in the past and what will be done in the future relative to where others are.

Mr. Bob Holding represents the trucking industry and said their interest is with economic reform and Workers's Compensation reform. The state is not in the position to be liberal. There is a large unfunded liability, companies are going broke, and some companies are moving out of state. All of this has to be taken into consideration with this bill.

Mr. Keith Olson, representing the Montana State Logging Association, stated the non-injured employee is being forgotten, and they are the ones making a wage concession or loosing jobs, and they were left out of the Governor's discussions.

Mr. Robinson stated he does not like seeing injured workers

benefits being cut. He also does not like the way different body parts are labeled by a certain number of weeks. SB 315 is people sensitive in the aspect that if an injured worker suffers actual wage loss of longer than the assigned amount of weeks, they can obtain something else.

Senator Blaylock asked Senator Thayer if there could be a compromise through lowering the total amount of a lump sum. Senator Thayer does not feel this would solve the problem.

Senator Haffey asked the subcommittee if they would present a grey bill to the committee with the following language; (1) language for mediation; (2) language changes on injury definition; (3) mutual agreement on lump sums; (4) 500 weeks of award to remain; and (5) a rule for the judge concerning lump sums. Senator Gage, Senator Blaylock and Senator Thayer agreed to this language. Senator Haffey said this process should state for itself that the Governor's Counsel, the subcommittee and the committee are trying to attend to the wants of our constituents.

Senator Gage asked Mr. Robinson who makes the decisions for Plan 3. Mr. Robinson said it was the claims examiner manager. Senator Gage asked Mr. Robinson what would happen if there was a liberal person in that position. Mr. Jim Murphy stated that internally all claimant's settlements are reviewed and there is a requirement that every settlement made by any claims examiner is also reviewed by the claims manager. There is a check and balance system. Mr. Murphy said if there is mutual agreement, then there would also be division approval required. He has a concern for an unrepresented claimant who settles a case, and stated there should be division approval. Senator Haffey agreed with his statement, and said it will be added to the language.

Senator Blaylock moved that the package outlined by Senator Haffey be recommended to the full committee.

Mr. Grosfield stated he has concerns with the way the language is written to receive lump sums. He said one of the biggest problems an attorney faces is getting a case through the structure, and with the statute the division now has, it is frustrating to everyone. He asked for some assurance from the division that the language written will be reasonable regarding the standard for review of lump sums by the division. Mr. Robinson stated he and Mr. Murphy spent most of the afternoon discussing the issue Mr. Grosfield raised. If there was mutual agreement by the insurer and the claimant, there would not be need for much more review except the division would need to look at the value received in a lump

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sum by the claimant. Senator Haffey stated the standards in reviewing lump sum awards should be written into the statute. Mr. Robinson agreed he would like to see this language put into the grey bill so the division has some direction.

Senator Van Valkenburg still has concerns with some issues in SB 315 that have not been discussed in this subcommittee, such as the definition of a workers job pool, and a definition of disease. Senator Van Valkenburg suggested thinking about putting repetitive trauma under injury rather than disease. Mr. Huntington also has some concerns with not addressing all the issues. Senator Haffey stated the principal persons involved in writing language will be refining the rest of SB 315 and SB 330, which were not addressed in the subcommittee, and this should be completed with an easy-to-reach agreement.

Mr. Robinson explained that a large amount of repetitive trauma can lead to classification problems. Senator Haffey asked what repetitive trauma does to the cost circumstances if included as an injury. Mr. Murphy replied it is a significant part of the injuries claim and is more costly in the injury portion than compared to occupational disease.

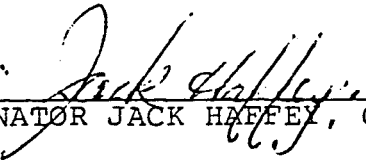
Senator Gage feels that the state of Montana is in a bad position when it comes to the Workers' Compensation rates, and we have to do more than our consciences allow in regard to the injured worker. If problems arise, then they can be amended in the next session.

Senator Blaylock made a motion to take the package as Senator Haffey outlined, which would not include Senator Van Valkenburg's request. There was a unanimous vote to accept this package. Senator Haffey stated the grey bill and the amendments that reflect the grey bill be drafted as amendments to SB 315. The work done on every part of SB 315 and the language in SB 330, that is other than the issues addressed in the subcommittee, will be drafted as soon as possible. Mr. Grosfield feels there might be a need for adjustment to the language concerning the mediator, but feels it can be worked out.

Mr. Tom Gomez stated in order to facilitate the preparation of the grey bill he would like to suggest the subcommittee give approval to Mr. Gomez, Ms. McCue, Ms. VanRiper and the staff to prepare the amendments in the form of a substitute bill. That is what is allowed under joint rules whereby you strike everything from the enacting clause of SB 315 and

rewrite the bill so it will read as if it were just introduced without all the complexities of various formal types of amendments. The committee agreed to this request. Senator Haffey explained this will be brought to the full committee when it is ready. Senator Haffey asked Senator Van Valkenburg if the bill is not ready until Saturday, February 21, 1987, would this meet the deadline. Senator Van Valkenburg stated there should be no problem with the Rules Committee.

ADJOURNMENT: There being no further business to come before this subcommittee, the hearing was adjourned at 9:51 p.m.



SENATOR JACK HAFHEY, Chairman

jr

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MANDATORY--NON-BINDING Arbitration

- 1.) With or without representation.
- 2.) Mediator hears dispute informally.
- 3.) Mediator reviews Division file for the case and has authority to receive any additional documentation or evidence either side provides and shall hear arguments presented by either party.
- 4.) Argument should include all evidence either party would present to the Workers' Compensation Court should the case go to hearing.
- 5.) After presentation of all information, the arbitrator shall recommend a solution and present such to both parties within a reasonable time. The parties must notify the mediator within 45 days of the mailing of his report whether or not the dispute has been resolved.
- 6.) The mediator shall make every reasonable effort to resolve the dispute.
- 7.) Both parties must make a bona fide effort to present all information and argument to the mediator, including a bona fide effort to resolve the dispute.
- 8.) In the event the dispute is not resolved, the mediator shall advise the Workers' Compensation Court in writing of his decision as to whether each party fairly presented the case as outlined above and fairly attempted to resolve the issue.
- 9.) The mediator shall also advise the Court whether, in the mediator's opinion, a bona fide dispute exists and whether or not the parties fairly attempted to resolve the dispute.
- 10.) If the mediator determines that either or both parties did not fairly present their case or did not make a bona fide effort to resolve the issue, the Court shall summon all parties including the mediator, shall review the proceedings that took place, and determine whether the mediator's conclusion is correct.
- 11.) Should the Court confirm the mediator's report, the parties are ordered back to mediator for further proceedings in an attempt to resolve the dispute.
- 12.) If a resolution is not obtained after the second proceeding, the parties may proceed to the Court for formal resolution of the dispute.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE 2/19/87

BILL NO. SB 315

POSSIBLE AGREEMENT

- ISSUE #1 Maintain Court with mandatory non-binding arbitration. (See attached)
- ISSUE #2 Provide court costs to claimant if he prevails.
- ISSUE #3 Maintain subrogation language in SB 315.
- ISSUE #4 Insert impairment rating by treating physician. Panel system to resolve dispute without mediation.
- ISSUE #5 Definition of "injury."

- a.) Include language on unusual strain.
- b.) Include repetitive trauma in occupational disease law.

OTHER ITEMS

- ISSUE #6 Maintain stress and eliminate heart attack and stroke language.
- ISSUE #7 Lump sums for permanent partial wage supplement benefits.
- Release insurer liability.
 - Mutual agreement--no court orders.
 - Limited court jurisdiction.
- ISSUE #8 Lump sums for permanent total benefits.
- Mutual agreement.
 - No court order.
- ISSUE #9 Rehab to be refined and/or clarified before 1989.
- ISSUE #10 Consider reducing maximum permanent partial award. ^{benefits}

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2/19/87
BILL NO. SB 315

2/19/87

ISSUE #2 Provide court costs to claimant if he prevails.

'39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. ~~In the event an insurer denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the workers' compensation judge.~~ (1) The insurer shall pay reasonable costs and attorney fees as established by the hearing examiner, board, or court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the hearing examiner, board, or court; and
the case of attorney's fees.

(c) if the hearing examiner, board, or court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

SENATE LABOR & EMPLOYMENT
EX. 2
DATE 2/19/87
BILL NO. SB 315

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"39-71-612. Costs and attorneys' fees that may be assessed against an employer--or insurer by---workers' compensation--judge. (1) If an employer--or insurer pays or tenders submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge hearing examiner, board, or court for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or tendered offered by the employer--or insurer, a reasonable attorney's fee and costs as established by the workers' compensation--judge hearing examiner, board, or court if the case has gone to a hearing may be awarded--by--the--judge assessed against the insurer in addition to the amount of compensation.

~~(2) --When an attorney's fee is awarded against an employer--or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the workers' compensation judge.~~

(2) An award of attorneys' fees under subsection (1) may only be made if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

SENATE LABOR & EMPLOYMENT
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(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2/19/87
BILL NO. SB 315

2/19/87

ISSUE #3 Maintain subrogation language in SB 315.

No amendment necessary. Current SB 315, Section 27,
incorporates the agreed upon language on p. 43, lines 14-21.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2/19/87
BILL NO. SB 315

2/19/87

ISSUE #4 Insert impairment rating by treating physicial.
Panel system to resolve dispute without mediation.

Impairment evaluation -- ratings.

(1) An impairment rating:

(a) is a purely medical determination and must be rendered by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from a physician of the party's choice. If the claimant and insurer cannot agree upon the rating, the procedure in subsection (3) must be followed.

(3)(a) On request of the claimant^{or} insurer,

the division shall direct a claimant to an evaluator for a rating. The evaluator shall:

(i) evaluate the claimant to determine the degree of impairment, if any, that exists due to the injury; and

(ii) submit a report to the division, the claimant, and the insurer.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 2

DATE 2/19/87

FILE NO. SB 315

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(b) (i) Unless the following procedure is followed, the insurer shall begin paying the impairment award, if any, within 30 days of the evaluator's mailing of the report.

(ii) Either the claimant or the insurer, within 15 days after the date of mailing of the report by the first evaluator, may request that the claimant be evaluated by a second evaluator. If a second evaluation is requested, the division shall direct the claimant to a second evaluator, who shall determine the degree of impairment, if any, that exists due to the injury.

(iii) The reports of both examinations must be submitted to a third evaluator, who may also examine the claimant or seek other consultation. The three evaluators shall consult with one another and then the third evaluator shall submit a final report to the division, the claimant, and the insurer. The final report must state the degree of impairment, if any, that exists due to the injury.

(iv) Unless either party disputes the rating in the final report as provided in subsection (b), the insurer shall begin paying the impairment award, if any, within 45 days of the date of mailing of the report by the third evaluator.

SENATE LABOR & EMPLOYMENT
ENCL NO. 2
DATE 2/19/87
BILL NO. SB 315

(4) (a) The division shall appoint impairment evaluators to render ratings under subsection (3). The division shall adopt rules that set forth the qualifications of evaluators and the location of examinations. An evaluator must be a physician licensed under Title 37, chapter 3. The division may seek nominations from the board of medical examiners.

(5) The cost of impairment evaluations is assessed to a workers' insurer, except that the cost of an evaluation under subsection (3)(b)(ii) and (iii) is assessed to the requesting party.

(6) A party may dispute a final impairment rating rendered under subsection (3)(b)(iii) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report. Disputes over impairment ratings are not subject to [NEW SECTION 23 in SB 315] or [mandatory mediation].

(7) An impairment rating rendered under subsection (3) is presumed correct. This presumption is rebuttable.

NOTE: Amend §38, 39-71-703, p. 55, line 23. Replace "an impairment evaluator" with "a physician".

STATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 2/19/87
BILL NO. SB 315

2/19/87

ISSUE #5 Definition of "injury".

(a) Include language on unusual strain.

39-71-119. Injury or injured and accident defined.

(1) "Injury" or "injured" means:

~~(1) a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result thereof and excluding disease not traceable to injury, except as provided in subsection (2) of this section;~~

~~(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village or fire district as a regular member of a lawfully established fire department, when diseases are caused by overexertion in times of stress or danger in the course of his employment by proximate exposure or by~~

~~cumulative exposure over a period of 4 years or more to heat, smoke, chemical fumes, or other toxic gases. Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary, or respiratory disease while in the course and scope of his employment.~~

(a) internal or external physical harm to the body;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

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ISSUE #5 Definition of "injury".

- (b) Include repetitive trauma in occupational disease law.

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; and Sec. 84, Ch. 397, L. 1979.

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Beneficiary" is as defined in 39-71-116(2).
- (2) "Child" is as defined in 39-71-116(4).
- (3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".
- (4) "Division" is as defined in 39-71-116(5).
- (5) "Employee" is as defined in 39-71-118.
- (6) "Employer" is as defined in 39-71-117.
- ~~(7) "Husband" is as defined in 39-71-116(7).~~
- ~~(7)~~ ~~(8)~~ "Independent contractor" is as defined in 39-71-120.
- ~~(8)~~ ~~(9)~~ "Insurer" is as defined in 39-71-116(8).
- ~~(9)~~ ~~(10)~~ "Invalid" is as defined in 39-71-116(9).
- ~~(10)~~ ~~(11)~~ "Occupational disease" means all diseases arising out of or contracted from and in the course of employment.

an injury as defined in 39-71-119 which arises out of or is contracted in the course and scope of employment, but is not caused by an accident as defined in 39-71-119(2).

- ~~(11)~~ ~~(12)~~ "Order" is as defined in 39-71-116(10).
- ~~(12)~~ ~~(13)~~ "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.
- ~~(13)~~ ~~(14)~~ "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.
- ~~(14)~~ ~~(15)~~ "Wages" is as defined in 39-71-116(20).
- ~~(15)~~ ~~(16)~~ "Wife" is as defined in 39-71-116(21).
- ~~(16)~~ ~~(17)~~ "Year" is as defined in 39-71-116(6) and 39-71-116(22).

NOTE: This definition of "occupational disease" assumes the definition of "injury" in SB 315.

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(1) death resulting from injury.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker while in the course and scope of employment is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm.

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ISSUE #6 Maintain stress language and eliminate heart attack and stroke language.

39-71-119. Injury or-injured and accident defined.

(1) "Injury" or "injured" means:

~~{1}--a-tangible-happening-of-a-traumatic-nature-from-an unexpected--cause--or--unusual--strain--resulting--in-either external--or--internal--physical--harm--and--such---physical condition--as--a--result--therefrom--and--excluding--disease--not traceable-to-injury,--except-as-provided-in-subsection-(2)--of this-section;~~

~~{2}--cardiovascular---or---pulmonary---or---respiratory diseases--contracted--by--a--paid--firefighter-employed-by-a municipality,--village,--or--fire-district-as-a-regular--member of--a--lawfully--established-fire-department,--which-diseases are-caused-by-overexertion-in-times-of-stress-or--danger--in the--course--of--his--employment-by-proximate-exposure-or-by cumulative-exposure-over-a-period-of--4--years--or--more--to heat,--smoke,--chemical-fumes,--or-other-toxic-gases,--Nothing herein-shall-be--construed--to--exclude--any--other--working person---who---suffers---a---cardiovascular,--pulmonary,--or respiratory-disease-while-in-the-course--and--scope--of--his employment;~~

(a) internal or external physical harm to the body;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

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(1)(c) death resulting from injury.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) ~~A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker while in the course and scope of employment is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm.~~

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~~(3)~~(c) death resulting-from-injury.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

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ISSUE #7 Lump sums for permanent partial wage supplement benefits.

- Release insurer liability.
- Mutual agreement--no court orders.
- Limited court jurisdiction,

ISSUE #8 Lump sums for permanent total benefits.

- Mutual agreement.
- No court order.

ISSUE #10 Consider reducing maximum permanent partial award.

1. 39-71-741. Compromise settlements and lump-sum advances, payments

~~division approval required. (1) The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Regardless of the date of the injury or of a prior lump-sum payment, a lump-sum conversion of permanent total biweekly payments awarded or paid after April 15, 1985, must equal the estimated present value of the total unpaid permanent total biweekly payments, assuming interest at 7% per year compounded annually, unless the conversion improves the financial condition of the worker or his beneficiary, as provided in subsection (2)(b). If the estimated duration of the compensation period is the remaining life expectancy of the claimant or the claimant's beneficiary, the remaining life expectancy must be determined by using the most recent table of life expectancy in years as published by the United States national center for health statistics.~~

~~(2) The conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and approval of the conversion rests in the discretion of the division as to the amount of the lump-sum payment and the advisability of the conversion. It is presumed that biweekly payments are in the best interests of the worker or his beneficiary. The approval or award of a lump-sum conversion by the division or the workers' compensation judge must be the exception, not the rule, and may be given only if the worker or his beneficiary demonstrates that his ability to sustain himself financially is more probable with a whole or partial lump-sum conversion than with the biweekly payments and his other available resources. The following procedure must be used by the division and the workers' compensation judge in determining whether a lump-sum conversion of permanent total biweekly payments will be approved or awarded:~~

~~(a) The difference between the present discounted value of a lump sum and the future value of the biweekly payments cannot be the only grounds for approving or awarding a lump-sum conversion.~~

~~(b) A lump-sum conversion that improves the financial condition of the worker or his beneficiary over what would have been reasonably expected had the worker not been injured or died can be approved or awarded only if the lump-sum conversion is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable~~

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~~over the estimated duration of the compensation period. The worker or his beneficiary must demonstrate the financial condition that would have been reasonably expected, taking into consideration his age, education, work experience, and probable job promotions and pay increases.~~

~~(c) If the existing delinquent or outstanding debts are used as grounds for a lump sum conversion, the worker or his beneficiary must demonstrate through a debt management plan that a lump sum for that purpose is necessary to sustain himself financially.~~

~~(d) If a business venture is used as grounds for a lump sum conversion, the worker or his beneficiary must demonstrate through a business plan that~~

~~a lump sum for that purpose is necessary to sustain himself financially. The business plan must at least show the feasibility of the business, given the market conditions in the intended market area, and the cash that will be available to him on a biweekly basis after start-up costs and other business expenses are considered throughout the expected life of the venture.~~

~~(3) If the division finds that an application for lump sum conversion does not adequately demonstrate the ability of the worker or his beneficiary to sustain himself financially, the division may order, at the insurer's expense, financial, medical, vocational rehabilitation, educational, or other evaluative studies to determine whether a lump sum conversion is in the best interest of the worker or his beneficiary.~~

~~(4) The division has full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim.~~

~~(5) A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination.~~

(1) Benefits provided for in this chapter may be converted, in whole or in part, to a lump sum payment, upon agreement by a claimant and an insurer. An agreement is subject to approval by the division, but approval may be withheld only if the division finds the conversion detrimental to the claimant, as set forth in subsection (2).

(2) The division may consider an agreement for a lump sum conversion detrimental to a claimant only if:

(a) in the case of a compromise and release settlement when the insurer disputes liability for the injury, the dispute over liability is reasonable; or

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(b) in the case of a lump sum conversion when the insurer has accepted liability for the injury:

(i) the ability of the worker to sustain himself financially would be substantially less likely with the lump sum than with biweekly benefits; or

(ii) under the agreement the claimant releases the insurer from probably liability for payment of benefits substantially in excess of the value of the lump sum.

(3)(a) If a claimant and an insurer cannot agree to a lump sum conversion, it is considered a dispute over which [a mediator or the workers' compensation court] has jurisdiction.

(b) [A mediator or the workers' compensation court] may order a lump sum conversion only if:

(i) the worker demonstrates that his ability to sustain himself is more probable with the lump sum conversion than with biweekly benefits;

(ii) the benefits to be converted are wage supplement benefits as set forth in [];

(iii) the benefits to be converted to not exceed 200 weeks of the workers' projected wage supplement benefits; and

(iv) the insurer's future liability for the benefits to be converted is substantially certain.

(c) [A mediator or the workers' compensation court] may not order a compromise and release settlement.

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(4)(a) Any conversion of biweekly benefits to a lump sum may be discounted based on the discount figure adopted by the division rounded to the nearest whole number, and based on the average rate for United States treasury bills in the previous calendar year.

(b) A conversion of permanent total disability benefits must be based on the permanent total disability rate at the time of the conversion, and may not take into consideration any cost-of-living adjustments as provided in [].

(c) The undiscounted value of a lump sum advance may be recouped by an insurer. An advance made pursuant to an agreement between the parties may be recouped as provided in the agreement. An advance of wage supplement benefits ordered by [a mediator or the workers' compensation court] may be recouped by the insurer by withholding biweekly payments until the advance is recovered.

(5)(a) The division has jurisdiction and full authority to approve lump sum conversions under this chapter, subject to the criteria set forth in subsection (2).

(b) Approval or disapproval shall be in writing, with a copy sent directly to the claimant. In the case of disapproval, the order shall state the reasons for the disapproval.

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(c) Once the division approves a compromise and release settlement, or in the case of a division denial and [the workers' compensation court] orders the approval, the case may never be reopened by the division or any court.

(6) If the division does not approve a lump sum conversion agreed to by the parties, either party may seek review of the division's decision by [the workers' compensation court].

(7) In addition to providing information to the division prior to division approval, a claimant must agree, as a condition of receiving a lump sum conversion, to provide any information regarding the expenditure of the lump sum as the division may from time to time request.

2. To limit the maximum permanent partial award as provided in SB315, p. 57, line 3 reference to "500" should be changed to "400".

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NEW SECTION. Section . Purpose. The purpose of this part is to prevent if possible the filing in the workers' compensation court actions by claimants or insurers relating to claims under chapters 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose this part provides for a procedure for mandatory, nonbinding mediation.

NEW SECTION. Section . Authority to adopt rules. The department may adopt the rules necessary to implement this part. The rules may prescribe:

- (a) the qualifications of mediators; and
- (b) a procedure for the conduct of mediation proceedings.

NEW SECTION. Section . Mandatory, nonbinding mediation. (1) In a dispute arising under chapter 71 or 72 of this title the insurer and claimant shall mediate any issue and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a civil action in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

(3) The mediator may recommend an award and approve settlement agreements. An approved settlement agreement is binding on the parties.

NEW SECTION. Section . Duties of a mediator. (1) A mediator shall assist the parties in negotiating a resolution to their dispute by:

- (a) facilitating an exchange between the parties;
- (b) assuring that all relevant evidence is brought forth during the mediation process;
- (c) suggesting possible solutions to issues of dispute between the parties;
- (d) recommending an award; and
- (e) assisting the parties to voluntarily resolve their dispute.

NEW SECTION. Section . Limitations on mediation proceedings.

(1) Mediation proceedings are:

- (a) held in private;
- (b) informal and held without a verbatim record; and
- (c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented

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mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all but the parties.

(4)(a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.

EW SECTION. Section . Mediation procedure. (1) A party may take part in mediation proceedings with or without counsel.

(2) The mediator shall review the division file for the case and may receive any additional documentation or evidence either party submits.

(3) The mediator shall request that each party offer argument summarizing the party's position. A party's argument shall include the evidence the party would present if the case were being presented to the worker's compensation judge.

(4) After the parties have presented all their information and evidence to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(5) The mediator's recommendation shall be in writing.

(6) A party shall notify the mediator within 45 days of receipt of the mailing of his report whether the party accepts the mediator's recommendation.

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SR 215

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

February 21, 1987

The fifteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 21, 1987, at 9:30 a.m. in Room 331 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 315: Senator Haffey, Chairman of the Senate Labor and Employment Relations Subcommittee, gave a summary of the deliberations of the subcommittee. There were many involved in the deliberation process. Employers, employees, insurers, and the Workers' Compensation Division were represented. The subcommittee met Wednesday morning, Wednesday evening and Thursday evening to put together a package that hopefully would allow the state to move forward with the Workers' Compensation statute. It represents a compromise of parties from all sides of the issue. Senator Haffey stated no one from the subcommittee has had the opportunity to read through the completed bill. Senator Haffey suggested the committee might like some time to read the grey bill through before executive action is taken. Senator Haffey said he felt this package can truly work well and it represents a compromise of many parties.

Senator Thayer stated before he could make any final commitment, he would like to read the finished product; however, he suggests a final recommendation be made some time today. Senator Thayer stated this does represent a fairly good compromise and one that is worthy of consideration. Senator Lynch stated the committee would meet later today to take executive action if that is agreeable to the rest of the committee. The committee agreed to meet later this day.

Senator Haffey thanked the many people involved. He suggested it would be best if the committee met early today for executive action because the committee has a commitment to get this bill to the Senate floor. He explained to the committee that technical cross references have not yet been reviewed.

Senator Gage stated the new bill should not be compared to the old SB 315 or SB 330, because this is a new bill. Senator Haffey said Senator Gage's statement is correct, but this new bill will be labeled SB 315.

FURTHER CONSIDERATION OF SENATE BILL 359: Senator Haffey stated there are amendments for SB 359, and Mr. Tom Gomez explained the amendments. Senator Haffey stated this bill is now limited to certain situations and does not adversely affect city and county governments in terms of compensation for police officers. Mr. Gomez agreed with Senator Haffey's explanation, and said it has nothing to do with that issue or the overtime compensation problem which arose at the local government level, and that was the Attorney General's original opinion. Senator Thayer asked Mr. Gomez if Congress passed a law establishing a \$2.75 minimum wage youth provision, would that mean in the state of Montana the minimum wage would be \$3.35. Mr. Gomez replied the federal law will generally always supersede the state law. The only case in which this language will change anything is where there is a large employer such as the restaurant industry. One that clearly has gross sales of \$350,000 and affected by interstate commerce and engaged by interstate trade. Those individuals under the federal law would be allowed to facilitate the \$2.25 minimum wage. In that case, Montana's law would supersede the federal law unless the congressional act was worded such as to clearly supersede any law in that area. Senator Gage asked Mr. Gomez what would happen if, after the session ends April 22, 1987, and on May 1, 1987, Congress passes a law that sets the minimum wage higher than the Montana minimum wage. Mr. Gomez replied if the federal law is higher with regard to persons covered by the federal law, they get the wage Congress has determined as being their minimum wage based on the federal law. It does not effect any other employee with regard to coverage by the state law. Senator Gage asked Mr. Gomez if Sections 39-3-402 and 39-3-404 would not apply to an employee. Mr. Gomez stated that is correct because the Montana minimum would not be higher than the federal wage.

Senator Haffey stated the language proposed for SB 359 would be an employee who is receiving \$3.35 an hour in Montana, and if the federal minimum wage goes to \$3.95 an hour, that person in Montana who is receiving \$3.35 an hour would stay at \$3.35 unless they were covered by the federal solely or superseded Montana law. Before October 1986, there were some in Montana who were receiving \$3.35 an hour minimum wage while doing jobs similar to those working for smaller restaurants who only pay \$3.05 an hour because they are not on the federal rate. Senator Haffey continued that the Montana minimum wage rate controls, and there are only limited circumstances where it would not.

Senator Thayer asked what would happen if the federal law

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passed a law for \$2.75 to be the minimum wage. It would seem the state of Montana could not employ people at \$2.75 per hour to take advantage of the federal program. Senator Haffey explained it works both ways, not being coupled or being coupled with the federal. There is no way to know what Congress will do in the future. Congress could raise the minimum wage or establish a new federal minimum wage law with categories. If Congress raised the minimum wage, those on the minimum wage would like to be tied to the federal law. Senator Keating asked if the amendments on page 3, line 4 will be reinstated. Mr. Gomez replied yes, the committee already acted on that amendment. Senator Keating asked Mr. Gomez if the amounts change. Mr. Gomez replied yes.

Senator Thayer stated he feels the state of Montana should be coupled with the federal law; it would eliminate confusion.

Senator Keating stated every time there has been a raise in minimum wage there has been an increase in unemployment. Senator Keating said he would not like to see the lower paid employees lose their jobs.

Senator Gage stated he was under the impression the reason for not coupling was to solve the problems of firemen. Senator Haffey stated this is being covered elsewhere in the language of the Fair Labor Standard Act. Being uncoupled establishes the state of Montana's minimum wage and it has the potential of cutting both ways. We do not know what Congress will pass or not pass in the future.

Senator Keating stated a problem with restaurants is that they can add part of the tips to the base wage of their employees, so the employer is actually only paying \$2 per hour. Senator Manning stated it bothered him that some restaurant employers use tips as part of the wage base. Senator Haffey stated his purpose for this bill was to take care of the AFLSA problem.

DISPOSITION OF SENATE BILL NO. 359: Senator Manning made a motion that the amendments be adopted. The motion carried unanimously. Senator Manning made a motion that SB 359 AND AS AMENDED, DO PASS. The motion carried unanimously.

Senator Lynch recessed the committee until 1:00 p.m. this day.

The meeting of the Labor and Employment Relations Committee was reconvened by Chairman Lynch on February 21, 1987, at 1:00 p.m. in Room 331 of the State Capitol.

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FURTHER CONSIDERATION OF SB 315: Senator Lynch explained there would be a new copy of SB 315 with technical changes ready for distribution at 2:30 p.m. in Room 331. Ms. Van Riper explained the amendments to the committee. In addition to technical errors, there are changes the legal staff would like to make on the clean draft. The changes are (1) Section 32, new subsection 2. A new sub section would provide as follows: the parties' failure to reach agreement is not a dispute over which, a mediator or the Workers' Compensation Court, has jurisdiction. (2) Section 56, new subsection 5, line 2 would read as follows: "mediator may issue a report and the parties and mediator may be required to attend." Senator Lynch asked Ms. VanRiper to explain what these changes will do. Ms. VanRiper stated the mediation process is supposed to be confidential, and this is an exception to the confidentiality rule to provide when a mediator makes a decision that one party did not cooperate with the mediation process. This decision can be appealed to the Workers' Compensation Court. The court can call both parties and the mediator in for a discussion whether or not it was a valid determination. Ms. Mary McCue asked interested parties to stop back for a clean copy of the bill because this is a very rough copy of the bill. The copy given out this afternoon will not have been edited or proofed, so if there are still errors, do not be concerned. Senator Lynch stated this is an unusual Labor Committee meeting so he will allow anyone who is involved to make comments. Senator Haffey made a motion that the amendments be adopted, and the motion carried unanimously.

DISCUSSION: Senator Lynch stated he is not going to support this bill, as in his opinion, there are several sections which are bad for the injured worker. Senator Lynch feels this bill will be back in two years due to law suits concerning the definition of injury. Senator Lynch complimented the subcommittee and all parties involved for the sincere effort to produce a bill. However, he does not feel the compromise is much of a change between the present law and the proposed law.

Senator Manning stated he agreed with Senator Lynch's statement and he will vote to get the bill out of committee, but is not sure he can support it 100% on the floor.

Senator Blaylock thanked all people involved in the preparation of the bill. He stated he will support the bill because he is the one who made the motion to change the cardiovascular, pulmonary and stroke language to state they are not injuries. However, he is uneasy with the fact this language could

possibly jeopardize the exclusive remedy, but said this is a good compromise.

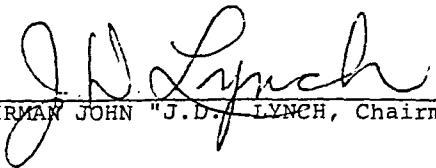
Senator Thayer feels the best way to help employees of Montana is by voting for this bill. This bill will help retain jobs in Montana and get Montana back into the competitive business field. This bill has many features that are an expansion of benefits Montana does not have at the present time. This bill does not detract from injured workers; it tries to abolish some of the abuses of the system and eliminate attorney involvement. Senator Thayer feels this is a bill all members of the Senate can support.

Senator Van Valkenburg thanked all involved in this process. He stated the contents of the law are more important than whose name is on the bill.

Senator Williams thanked the full committee and the sub-committee for their work. He urged support of this bill.

DISPOSITION OF SENATE BILL NO. 315: Senator Haffey made a motion that SB 315 AND AS AMENDED, DO PASS. Senator Haffey's motion carried 7 - 1. See attached roll call vote sheet.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 1:10 p.m.


CHAIRMAN JOHN "J.D." LYNCH, Chairman

ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 21, 1988

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date February 23, 1987 Bill No. SB 315 Time

NAME	YES	NO
John "J.D." Lynch, Chairman	X <i>J.D.</i>	
Gene Thayer, Vice Chairman	<i>GT</i>	
Richard Manning	X <i>RM</i>	
Thomas Keating	X <i>TK</i>	
Chet Blaylock	<i>CB</i>	
Delwyn Gage	X <i>DG</i>	
Jack Haffey	X <i>J.H.</i>	
Jack Galt	<i>J.G.</i>	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: STATEMENT OF INTENT SB 315

DO PASS

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Sept 21, 1987 Bill No. SB 315 Time 1:10 p.m.

NAME	YES	NO
John "J.D." Lynch, Chairman		X
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating	X	
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass As Amend

February 21, 1987

Mr. President,

WE, YOUR COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS
HAVING HAD UNDER CONSIDERATION SENATE BILL 315, ATTACH
THE FOLLOWING STATEMENT OF INTENT:

STATEMENT OF INTENT

SENATE BILL 315

A statement of intent is required for this bill because
of the following:

The division of workers' compensation needs to adopt
rules to efficiently and fairly implement the Workers'
Compensation Act. There are numerous references throughout
the act to rules, rates, procedures, and forms to be prescribed
by the division. (e.g., 39-71-208, 39-71-307, 39- 71-410,
39-71-604, 39-71-2102, 39-71-2303, and 39-71-2304) However,
there is no explicit statutory grant of rulemaking authority
in the chapter.

The Montana supreme court, in Garland v. The Anaconda
Company, 177 Mont. 240, 581 P.2d 431 (1978), tacitly recognized
39-71-203 as a general grant of rulemaking authority. To
preserve the division's rulemaking authority and extend it to
the amendments promulgated in this bill, the legislature
explicitly grants and extends rulemaking authority to the
division to implement the Workers' Compensation Act.

The division may adopt rules as necessary to implement
the act. The division shall provide the rules, procedures,
and forms specifically referred to in sections of the act
and implement other sections as necessary and appropriate by

STATEMENT OF INTENT

SENATE BILL 315

providing specific guidelines, policies, and procedures
to serve the efficient and fair administration of the act.

STANDING COMMITTEE REPORT

February 21, 1927

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS
having had under consideration SENATE BILL No. 315

(first) reading copy (white)
color

GENERALLY REVISE WORKERS' COMPENSATION LAWS

Respectfully report as follows: That SENATE BILL No. 315

(SEE ATTACHED AMENDMENTS)

AND AS AMENDED,

DO PASS

~~DO NOT PASS~~

STATEMENT OF INTENT
ADOPTED AND AMENDED

STANDING COMMITTEE REPORT

.....February 21..... 19.87..

MR. PRESIDENT

We, your committee on.....LABOR AND EMPLOYMENT RELATIONS.....

having had under consideration...SENATE BILL..... No...315.....

(first) reading copy (white)
color

GENERALLY REVISE WORKERS' COMPENSATION LAWS

Respectfully report as follows: That.....SENATE BILL..... No.....315.....

1. Title, lines 5 through 23.

Following: "AN ACT"

Strike: lines 5 through 23 in their entirety

Insert: "TO GENERALLY REVISE THE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; TO PROVIDE THAT OBTAINING BENEFITS FRAUDULENTLY CONSTITUTES THEFT; AMENDING SECTIONS 19-12-401, 39-71-116, 39-71-118, 39-71-119, 39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414, 39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708, 39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741, 39-71-803, 39-71-1003, 39-71-2106, 39-71-2901, 39-71-2903, 39-71-2905, 39-71-2907, 39-71-2909, 39-72-102, AND 45-6-301, MCA; REPEALING SECTIONS 39-71-104, 39-71-121, 39-71-122, 39-71-410, 39-71-705 THROUGH 39-71-707, 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104, MCA; AND PROVIDING APPLICABILITY DATES AND EFFECTIVE DATES."

2. Pages 1 through 111.

Strike: everything following the enacting clause

(See attached.)

7054a/L:JEA\WP:jj

AND AS AMENDED,

DO PASS

~~DO NOT PASS~~

STATEMENT OF INTENT ADOPTED
AND ATTACHED

Sen. John "J.D." Lynch

Chairman.

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BUSINESS & LABOR COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members

District

Rep. Les Kitselman, Chairman	95
Rep. Fred Thomas, Vice Chairman	62
Rep. Bob Bachnini	14
Rep. Ray Brandewie	49
Rep. Jan Brown	46
Rep. Ben Cohen	3
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Rep. Lloyd McCormick	38
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Secretary

Elsie Sebens-Armstrong

Staff

Paul Verdon

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 9, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 9, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 315 - Generally Revise Workers' Compensation Laws; Abolish Workers' Comp. Court, sponsored by Sen. Bob Williams, Senate District 15, Hobson. Rep. Williams stated the bill would not lower rates and would not address the unfunded deficit. He said the bill would be the proper tool; the Workers' Compensation Division could work with to insure the survival of the system and employers in the state. He commented the importance of ensuring fair and equitable settlements for all the deserving workers.

Bob Robinson, Administrator of the Workers Compensation Division, gave an overview of SB 315. He said the bill should restore balance and predictability to the system that is intended to insure that the workers' benefits are provided swiftly and surely with a minimum of necessity for attorney involvement and litigation. He commented that if major reform is not enacted that the state fund could not continue to pay benefits. He mentioned that the recent increase in workers' compensation rates for the state fund that went into effect in January was paid for through reductions in salaries to the employees.

Mr. Robinson stated that the Governor's Workers' Compensation Advisory Council recommendations provide the basis for the reforms contained in SB 315 and the bill went beyond the recommendations in order to provide true and lasting reform. He added that the bill would return the workers' compensation philosophy that it was intended to pay the medical expenses and wage replacement while the individual is unable to return to work. He pointed out incentives for the insurer to provide better service and additional benefits provided to the workers in addition to some other changes. He said in addition to costs, lump sum settlements are addressed. He commented that an analysis conducted by the Division on lump sum settlements for education or establishing a business between January and May of 1985, were found that 64 percent of those lump sums were never used for the intended purpose. He said lump sums in the bill would be provided for impairment awards and in the case of permanent total injuries up to \$20,000 and primarily for debt restructuring. He said concerns presented by opponents were taken into consideration when drafting the bill. He commented that major sections of SB 330 that establish rules

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and guidelines for the procedures before the workers' compensation court are included in this bill. He added limiting lump sums, even though there was a strict limitation in SB 315 which was somewhat loosened in the senate, but there is prohibition against the court ordering lump sum settlements. He commented these compromises have addressed all the important concerns of the trial attorneys, and of other opponents of the bill. He said administration believes this bill is workable in its present state, and is a humane solution to the workers' comp situation without complete elimination of major benefits from the injured workers.

Gene Huntington, of the Governors Office. He said that this bill was requested by the administration and would address the workers' compensation problem.

PROPONENTS

Sen. Gene Thayer, District 19, Great Falls. Senator Thayer stated there is a problem of the \$100 million plus unfunded liability that has to be solved. He pointed out the chief difference from the advisory council and the original SB 315 was in the area of the comp court which would have been eliminated through that bill. He said through negotiations the court was left in the bill, but put in a mandatory mediation ahead of the court. He said the bill clarifies the language in existing law and removes the liberal construction language. He commented that many employers were ready to close down or leave the state due to these high costs. He said this bill still does not address the unemployment liability, but will keep from raising rates in the future, and has accomplished some of the goals of the Advisory Council which was to take care of the truly injured person in an expeditious manner to eliminate some of the fraud and abuses of the system, and eliminate some of the attorney involvement, and get people off the system and back to work sooner.

Dave Patterson, professor of law at the University of Montana Law School. Mr. Patterson stated the compensation court was the best independent judicial processes available in workers' compensation. He said the court was not a problem in terms of the money, but the mediation process adds another layer of expensive bureaucracy where efforts are duplicated. He said the new section 52 needs to be looked at in the interest of efficiency and money where the process is repeated in dispute situations.

Rep. Paula Darko, House District 2, Libby. Rep. Darko stated this problem has an impact on her area. She said the bill would benefit the workers and be in the best interest of the state.

Bruce Vincent, representing the WCAC, Libby. Mr. Vincent stated the WCAC represented three victims of the current system. He said these were the truly injured worker that try to use the system, the employer, and the non-injured worker that try to pay for the system. He commented that this bill is the answer, it is an amended version and they know that it is a compromise bill, and this will work. He pointed out the difference in rates from the neighboring state of Idaho which was 30 miles away. He said what the outcome of this bill will dictate what logging will do next year, because they cannot continue with the rates they are paying.

Dawn DeWolf, representing the Montana Association for Rehabilitation and the Montana Association for Rehabilitation Facilities. Ms. DeWolf stated the facilities are providing vocational evaluations for injured workers. She said the organization supports the bill because it provides for early, timely intervention and rehabilitation of the injured worker. She explained rehabilitation and described a referrals. She said the function of the rehab process was to coordinate the work of the insurance claims representative, medical and legal teams on both sides, vocational evaluators, physical therapists, psychologists etc. She said this bill provides options, directions, and choices for all those disciplines and results in producing the real product of workers compensation, which is a restored and working exclaimant who is independent, a taxpayer and a member of the community. She commented the bill brings into focus the critical element of rehabilitation in workers compensation, and will change the role of rehab as it is today.

Doug Crandell, Manager of Brand S Lumber, and Chairman of Montana Wood Products Association, Livingston. Mr. Crandell said they employ 120 people year around and are privately insured for workers' comp with rates costing over \$300,000 a year, which is a 240 percent increase in the last four years. He said safety is important, and at Brand S they have practiced safety. He said there were no lost time injuries for the last eight months even at the success of the safety program, rates were still going up. He commented that other states surrounding Montana have substantially lower rates, which is a competitive disadvantage in the national lumber market. He added that everything he read such as the National Council and Compensation Insurance, which ranked Montana system the third worst, and basically found that the system is easy to take advantage of and it is over litigated. The reason for this problem mostly stems from the law itself.

Dr. Jack McMahon, co-legislative chairman for the Montana Medical Association, practicing physician, and medical director for the Montana Foundation for Medical Care,

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Helena. Dr. McMahon stated their group was a key element in workers' compensation. He said some cases were not workers compensation injuries to start with, and commented on one case which was one of the state paying for a man to live the way he wanted to for the rest of his life. He said the current bill should be utilized to insure that physicians with integrity, experience and skill help the Division in making decisions.

Mike Micone, representing the Western Environmental Trade Association. Mr. Micone stated they supported this bill in its original form, but the present bill is a reasonable compromise. He said it was necessary for reform in order to have stability in the system. He commented that the labor organization believes that continuation of the present system will cause a loss of jobs in Montana. He said that fraud should be prosecuted, but if all fraud was to be eliminated in the system, it still wouldn't correct all the problems in workers compensation.

Michael Amstadter, representing the Rehabilitation Association of Montana. Mr. Amstadter stated the Association recognizes the need for extensive reform. He said rehabilitative services provide a defined return to work and re-training priorities are beneficial for the worker and represent a cost savings to the employer and insurer. He submitted written testimony. Exhibit No. 1.

Bill Leary, past president of the Montana Hospital Association. Mr. Leary explained that hospitals and nursing homes are service organizations and are labor intensive. He said that collectively they are one of the major employers in Montana, and the Montana Hospital Association supports the goals and reforms embodied in SB 315. He said hospitals are major employers and pay millions of dollars in wages and salaries and thousands of dollars of workers' compensation fees. He commented that the hospitals are concerned about the financial viability of the workers' compensation system, and that the Montana Hospital Association was in opposition to governmental non-negotiated rate setting. He submitted written testimony. Exhibit No. 2.

Chadwick Smith, attorney in Helena representing the Montana Medical Association, proposed an amendment. Exhibit No. 3. He said that the amendment does not address employer rates or benefits. He commented that they are addressing in this amendment with the matter of rate setting of medical provider fees and a rate freeze that is prescribed in the bill as it is presently written. He stated that hospitals are non-profit, and hospital rates cannot be cut unless the cost is shifted to someone else. He commented that costs can only be cut by reducing service.

Stewart Doggett, representing the Montana Chamber of Commerce. Mr. Doggett stated the Chamber polled its members and they rated reform of the workers' comp program as an important issue. He said they felt that this bill was fair and reasonable legislation, and hopes it gets the workers compensation program on to recovery. He added the bill addresses their concerns and concerns of the members to reform the lump sum payment provision and the liberal construction clause and encourages a return to work system.

Alec Hansen, general manager of Montana Municipal Insurance Authority. Mr. Hansen stated they provide workers' compensation insurance for 74 cities and towns in the state. He said the problem was the cost of reinsurance. He said that they were required by law to have both specific and aggregate reinsurance coverage. He said it was difficult to secure this coverage in the market. He said the bill would balance the right of injured workers with the necessity of controlling the cost of providing insurance. He submitted written testimony. Exhibit No. 4.

Bonny Tippy, representing the Montana Chiropractor Association, spoke in support of the concept of reformation of workers' compensation laws in the state. She offered one amendment to allow impairment ratings by other types of health care professionals. She submitted written testimony. Exhibit No. 5.

Norm Grosfield, attorney in Helena and former administrator of the Workers' Compensation Division. Mr. Grosfield stated he primarily represented injured workers. He presented a summary of SB 315. Exhibit Nos. 6 and 7.

George Wood, representing the Montana Self Insurers Association. Mr. Wood stated the bill should be passed as presented, with no amendments.

Robert N. Holding, representing the Montana Motor Carriers Association. Mr. Holding stated they support this compromise bill and was economic in view of the fact of truckers leaving the state of Montana.

Mons Teigen, representing the Montana Stockgrowers and Cattlemens Association, spoke in support of the bill without amendment.

Steve Seiffert, representing Columbia Falls Aluminum Company, recommended passage of SB 315 without amendment.

Irv Dillinger, representing the Montana Home Builders Association and the Montana Building Material Dealers Association, recommended passage of SB 315.

Keith Olson, Executive Director, of the Montana Logging Association. Mr. Olson stated they are in reluctant support of the bill. He said they are reluctant from the perspective that he has to tell the Independent Logging Contractors in the state that the current \$7,000 a year premiums they are currently paying per employee are not going down even with passage of this bill, and a good chance of a rate increase this year.

OPPONENTS

Terry Trewiler, attorney from Whitefish. Mr. Trewiler stated he represents people who have been injured and as a result of their injuries have been disabled. He said he also represents a few families whose primary wage earner has been killed during the course of his employment and who are dependent on the death benefits. He discussed the problems with the current benefits and the effects on the lives of people. He felt that SB 315 was a product of the worst misinformation campaign ever conducted at the public's expense. He pointed out areas where people had been misled on the current state of affairs in the workers' compensation practice.

Mr. Trewiler stated it seemed that workers' compensation benefits were some type of welfare or gratuity bestowed on injured workers by the state, which was not true. He commented that when workers go to work they enter into a contract with their employer, in return for what they receive in workers' compensation benefits they give up rights. He said they give up the right of common law for full compensation for their injuries or their deaths. He added regardless of how negligent their employer is or unsafe their work environment, injured workers, until the recent amendment to the constitution, were the only people in the state of Montana who did not have a right to full legal redress.

Mr. Trewiler said the public has been told that the state insurance fund and the Workers Compensation system are in the terrible condition because of the liberal court decisions, which is not true, he said. He said the difference between claimants' attorneys and the defense attorneys is that claimants' attorneys only get paid when they are right. He added that the biggest reason that Montana loggers pay higher premiums than Idaho loggers is not because the benefits in Montana are higher, it is because Montana loggers are in a narrower rate pool. He commented that this bill would detract from the quality of life in Montana, and would impose further hardship on the people that can least afford it.

Ben Everett, an attorney from Anaconda. Mr. Everett commented on his membership on the Workers' Comp Advisory Council. He felt the legislation was repressive, costly and will deprive workers of benefits. He pointed out there was

no inflation factor included in the bill. He said the bill was not a compromise bill, and takes benefits away from the injured worker, and gives the Workers' Comp Division control.

Jim Murry, Executive Secretary of the Montana State AFL-CIO. Mr. Murry stated that the bill was trying to balance the need to reform the current system with needs of injured workers. He felt that the injured workers were the ones being compromised. He said that under the new bill, total workers' compensation benefits would be reduced 25-30 percent. He submitted written testimony and a letter to the editor, written by an injured worker in Missoula, that expressed problems workers have to deal with. Exhibit Nos. 8 and 9.

Jay Reardon, President of Local 72, United Steelworkers of America, representing 225 workers at ASARCO in East Helena. Mr. Reardon stated he was concerned about the substantial change in the definition of injury. He pointed out the pay cuts taken by employees in the name of corporate survival. He said with the bill the employees would not have protection against long-term exposure of toxic gases and industrial poisons. He submitted written testimony. Exhibit No. 10.

Willis Bickle, an injured worker. Mr. Bickle explained how his injury occurred through gross negligence of an employer that was unconcerned about safety of his employees. He commented a year that a law had been enacted by Workers' Compensation that stated that an employer is not subject to any liability for the death or personal injury to an employee covered by Workers' Comp. He said this is interpreted to mean that an employer is protected by law but the worker has no protection. He submitted a written explanation and testimony. Exhibit No. 11.

Gene Fenderson, representing the Montana State Building Construction Trade Union. Mr. Fenderson stated the new section 7 in the bill covered fraud in the system and he had no problem with that. However, employers should be treated under the same circumstances, he said. He commented on the underground economy in logging and construction and submitted written testimony. He also submitted an amendment that would bring the employers under the same penalty as fraudulent workers. Exhibit No. 12 and 12 (a).

Joe Bottomly, attorney from Great Falls. Mr. Bottomly stated that there were problems with the bill, and one was the definition of an injury. He commented that the employers' liability was going to increase. He said that other jurisdictions that have restrictive definitions have held that if it is not covered under workers' compensation, there are ways to bring them under general liability laws. He

commented that the exclusivity rule in Montana has always protected the employer, not the employee, and the restriction of the definition of injury will cause problems. He said taking away the jurisdiction of the workers' compensation court the ability to award the worker a lump sum and rehabilitation will cause another problem, which would cause a distress situation for the worker. He commented that the layers of panels for the rehabilitation will not reduce litigation, but the effect will be the opposite. He said the worker will hire an attorney because of the layers of bureaucracy that have been created. He proposed to strike the rehabilitation panel to allow the worker to choose his own doctor, and allow the insurer to choose the rehabilitation panel expert.

Rep. Jerry Driscoll, House District 92, Billings. Rep. Driscoll commented that there is about \$100 million a year spent by the Workers' Compensation Division and less than half goes to the injured worker. He said the money goes to the medical community, the rehabilitation, defense and plaintiff attorneys, and administration. He pointed out the fiscal note stated that \$900,000 is defense attorney costs, and said this was not a benefit to injured workers, when the fund could hire expert attorneys.

QUESTIONS

Rep. Driscoll asked Sen. Williams whether the bill could save money. Sen. Williams said it would not lower rates and would not address the unfunded deficit.

Rep. Cohen asked about the cardiovascular pulmonary diseases that were excluded specifically in the new language. Mr. Robinson replied that this was not covered unless a doctor can attribute them to an event at the work place. Vern Erickson, representing Montana State Fire Fighters Association, said that was one of the most feared occupational hazards: the accumulation that affects cardiovascular respiratory health problems for the person in the fire service. He said this was an important point that was deleted in the bill and if a subcommittee is appointed he would like to be involved in the discussion. Bob Robinson said that accumulation was covered. He said if there was a question as to whether it was caused by a particular accident, it would be covered under occupational disease, and section 72 had language that covered a repetitive situation.

Rep. Cohen asked if repetitive trauma would be excluded. Bob Robinson said it was covered and included medical, temporary total, and permanent benefits, but no partial benefits.

Rep. Wallin asked Jim Murry about the mismanagement of funds and asked why the private companies were pulling out of

Montana. Jim Murry responded there are many things that are contributing to the problems with the workers' compensation system, and they think so many of the areas have been ignored. He said the area of employers not paying their premiums as required by law, and what the full impact of the deficit to the system because of this, is one example. He added there are problems of workers having to go to attorneys because they can not get a response from the Division, and the cost to the Division. He said the bill would make significant changes in the law that would affect private insurers also.

Mr. Trewiler said that private carriers have pulled out of the state because they cannot compete with the artificially low premiums being charged by the state fund. He pointed out from 1975-1985 when medical expenses were skyrocketing and wages were going up, the state fund premium dropped 10-12 percent and were paying back dividends. He said the private industry could not compete with that so their share of the market kept shrinking until they were left with high risk cases.

Rep. Grinde asked Mr. Everett what the average time was spent on the workers' comp cases. Mr. Everett replied that it sometimes took about 2-4 years before a case was resolved. Rep. Grinde asked about the charges to clients. Mr. Everett replied that he charged on a contingency fee basis that was approved by the Division of Workers' Compensation. He said his attorney retainer agreement is submitted to the Division and based on a sliding scale. He said it was 25 percent of settlement or award if settled without a hearing or 30 percent if a hearing is required or 40 percent if it goes to the Montana Supreme Court.

Rep. Grinde asked who sets the percent. Mr. Everett replied that it was set by the Division of Workers' Compensation as the maximum as a rule making authority. He said the Division has changed their rules and restricted it even more.

Rep. Grinde stated that they all knew there was a problem with the system and all would have to compromise or the whole system would crumble, and asked, if the greatest concern was for the worker, have the trial attorneys or other attorneys ever approached the Division and told them they would be willing to take less and have the rates lowered. Mr. Everett replied that they had not, but they had gone to the Division and met with the Administrator and said if there was a problem with attorneys, expertise would be provided to stop any abuses. Rep. Grinde commented that a compromise was needed even on the attorney side.

Rep. Driscoll asked Bob Robinson about the lump sum settlements being reduced dramatically. Mr. Robinson replied that it was a decision between the insurer and the claimant.

Rep. Driscoll asked about the plan to keep the unfunded liability from getting worse. Mr. Robinson said the bill only addressed the benefits and costs from this point forward.

Rep. Brandewie asked if this would make non-conforming employers liable for criminal penalties. Mr. Robinson said that was not proposed but that fraudulently obtained benefits should be caught in the language in the bill.

Rep. Simon asked Mr. Robinson about model legislation in other states. Mr. Robinson pointed out the 1970 Presidential Commission that identified the points that needed to be included in every state workers' compensation system. He pointed out that Montana was a leader in that. He said the bill was refining the law and addressing major loopholes caused by imperfect language and court decisions that have eroded that.

Rep. Simon asked what the differences of this law, if enacted, would be compared to other states. Mr. Robinson responded they are not drastically different, Montana's has more emphasis on rehabilitation.

Rep. Simon questioned that only half the benefits paid out go to injured workers and the other half to administration, lawyers and medical. He asked what portion went to medical providers. Bob Robinson responded that in 1985, \$29.7 million of \$101 million was for medical expenses which is actually a benefit to the worker.

Rep. Simon asked about the follow up the Division has on cases. Mr. Robinson responded they did not have much follow up. He said there was an obligation by the medical provider to identify whether the individual could go back to work, and the claims examiner has the responsibility to contact the person. He said the state fund does have some field examiners that can make contact, but the Division did not have the time to follow up to the detail that a good claims examination management process would provide.

Rep. Simon asked about lump sums being awarded to accomplish a specific purpose, and if there was protection to the Division to make sure the lump sum is used for that purpose. Mr. Robinson replied that there hasn't been much follow up on that, and that the Division had a regulatory responsibility in the Compliance Bureau to make sure that the claimant is not being taken advantage of by the insurer.

Rep. Thomas asked Bruce Vincent about the work comp rate for loggers. Bruce Vincent replied that it was \$34.39. He said the rate for Idaho was at \$18 and would be reduced to \$16.

Rep. Thomas asked Mr. Trewiler about the rates being artificially low. Mr. Trewiler said they were low for some industries, but are starting to increase and that was the reason for the uproar.

Rep. Glaser asked Bob Robinson about the \$32,000 a day negative cash flow, and why the rates weren't increased. Mr. Robinson responded the rates were raised at 10.5 percent the first of July and an additional 17 percent on the first of January for a cumulative 27 percent higher than was in effect last June.

Rep. Glaser asked if the projections for 1987 are that there will be a negative cash flow of \$52,000 a day, which means the rates would have to be raised 30%, why haven't the rates been increased. Mr. Robinson responded that in November when they realized they would need a rate increase, they placed a rate increase of about \$5.5 to \$6 million, which should have been about \$10 million. He said this was an attempt to keep the rates somewhat under control for the employers that are having difficulties, but the Division knows that their rates are too low.

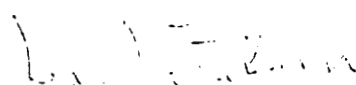
CLOSING

Sen. Williams commented that there are a lot of different areas to address in the workers' compensation issue. He said some of the self insurers do have good programs. He suggested that the bill stress the need to hold the line on the proposed increased rates of about 23 percent that would make the bill pass the way it is, not addressing the unfunded balance or the increase. He said this bill would not decrease the rates at this time, nor fund the unfunded balance, but is a start in the right direction. He said if there was a need to amend, he asked that the rates not be increased. He suggested evaluating the report presented by Norm Grosfield.

Chairman Kitselman referred Senate Bill No. 315 to a subcommittee composed of Reps. Smith, Glaser, Grinde, Nisbet, and Driscoll, with Rep. Glaser as chairman.

ADJOURNMENT

The meeting was adjourned at 12:00 noon.



REP. LES KITSELMAN, Chairman

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 9, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN			
REP. FRED THOMAS, VICE-CHAIRMAN			
REP. BOB BACHINI			
REP. RAY BRANDEWIE			
REP. JAN BROWN			
REP. BEN COHEN			
REP. JERRY DRISCOLL			
REP. WILLIAM GLASER			
REP. LARRY GRINDE			
REP. STELLA JEAN HANSEN			
REP. TOM JONES			
REP. LLOYD MCCORMICK			
REP. GERALD NISBET			
REP. BOB PAVLOVICH			
REP. BRUCE SIMON			
REP. CLYDE SMITH			
REP. CHARLES SWYSGOOD			
REP. NORM WALLIN			

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DATE 3-9-87
HB SB315

REHABILITATION ASSOCIATION OF MONTANA
P.O. Box 8415
Missoula, Montana 59806

Testimony of the Rehabilitation Association of Montana
Senate Bill 315
House, Business & Labor Committee
March 9, 1987

Mr. Chairman, members of the committee, my name is Michael Amstadter, and I have been asked to speak on behalf of the Rehabilitation Association of Montana. The Rehabilitation Association of Montana represents private sector professional counselors who provide rehabilitation services to industrially injured workers. Private rehabilitation has been available in Montana since 1979, and is currently utilized in most states nationwide. Our services are requested by plans I, II, and III Workers' Compensation Insurance carriers, United States Department of Labor (OWCP), Long-term Disability, and Personal Injury carriers. The Rehabilitation Association of Montana recognizes the need for extensive reform of the Workers' Compensation system in the state of Montana and we support S.B. 315.

We believe that rehabilitation services to assist the industrially injured worker's expedited return to productive employment is a cost-containment measure that is an integral part of the Workers' Compensation system. Rehabilitation services provided within a structured system, with defined return-to-work and re-training guidelines, are beneficial for the worker and represent a cost savings to the employer and insurer. Mr. Laury Lewis, the former Administrator of Montana Workers' Compensation Division and the current Administrator of the Nevada Industrial Commission, noted in his February 14, 1987, presentation before the Senate Labor Committee, that rehabilitation services are a cost-containment measure which is central to the Workers' Compensation system.

Industrially injured workers in the state of Montana have a right to rehabilitation. Not only is it beneficial to help get them back into the mainstream of life as productive individuals, but if it is provided early, within sixty to ninety days post-injury, and has definitive parameters with regard to services and length of service provision, it is cost effective for both the employer and insurer while benefiting the injured worker. However, in order for rehabilitation services to be effective, both the injured worker's rights as well as his responsibilities in the system must be clearly defined.

The current Workers' Compensation system regarding rehabilitation for industrially injured workers was developed from a myriad of case law. There is not a satisfactory statutory structure or defined rehabilitation process. The current system does not promote

accountability. The injured worker has, at best, a vague understanding of both his benefits and responsibilities. The employer and insurer are also equally at a loss regarding the rehabilitation process. There is considerable ambiguity and confusion in the current Workers' Compensation system regarding when rehabilitation services should begin, the scope of required rehabilitation services including the injured worker's responsibilities, and equally as important, when rehabilitation services are completed. These factors are central to the escalating cost of the current Workers' Compensation system because time-loss benefits continue throughout this loosely defined process.

The Rehabilitation Association of Montana is very pleased to note that Senate Bill 315 recognizes the need for a structured system of rehabilitation services for Montana's industrially injured workers. The proposed legislation addresses the following rehabilitation issues:

1. Clarification of the rights and responsibilities of both the injured worker and the insurer in the rehabilitation process.
2. Statutorially defined time-lines for rehabilitation referral, including incentives for both the insurer and the injured worker.
3. Provision of rehabilitation services by qualified professionals certified by the Board for Rehabilitation Certification.
4. A structured set of defined return-to-work and re-training priorities.
5. The injured worker's right to a clearly defined grievance process.
6. Continuation of compensation benefits during rehabilitation, so that the disabled worker can maintain his dignity and provide for his family during the return-to-work process.

The rehabilitation process outlined in S.B. 315 clearly delineates the rehabilitation benefit provided by the insurer, as well as the worker's defined rights and responsibilities in his own rehabilitation, and serves to establish Montana's Workers' Compensation as a return-to-work system as opposed to an unemployment program.

The Rehabilitation Association of Montana endorses passage of S.B. 315. Thank you for your consideration.

DATE 3-9-87 March 9, 1987HB SB 315

MONTANA HOSPITAL ASSOCIATION

Testimony Before House Business and Labor Committee on Senate Bill 315

Chairman Kitselman, Members of the Committee, for the record I am Bill Leary, the Immediate Past President of the Montana Hospital Association, appearing here today on behalf of the fifty-five hospital members and their thirty-three attached nursing homes.

Hospitals and nursing homes are service organizations and by the very nature of the services they provide are labor intensive and are collectively one of the major employers in Montana. In many of our cities and communities, the hospital is the major employer.

The Montana Hospital Association supports the goals and reforms embodied in Senate Bill 315 - The Workers' Compensation Reform Act. Hospitals, as major employers in the state, pay millions of dollars in wages and salaries and thousands of dollars in workers' compensation fees. Thus we are concerned about the financial viability of the workers' compensation system. While we have been able, through our rigorous safety programs, to minimize accidents, we will admit to adding to the occupational injury statistics, perhaps not in the number of accidents as the logging, construction or other industries, but we have certainly had our share.

Hospitals also want to work with the Workers' Compensation Division to save money on hospital claims, or for that matter any group that is committed to true health care cost containment. Our efforts in hospital cost containment, which does reflect on lower increases in charges for all the people we serve has not gone unnoticed. Montana hospitals still rate 46th in the nation in terms of average costs and average charges per stay.

Unfortunately, the kind of patients we receive as a result of an industrial accident cannot be considered average. Most of the patients are critically injured, in severe trauma condition, and the physicians, surgeons and hospital staff must exert their combined talents and use a high amount of resources just to save the life of the injured worker - thus the first several days of treatment can mean a bill of \$5,000 to \$10,000 or more. I'm sure that both management and labor, and certainly the family of the injured worker would not want us to do otherwise.

I refer you to page 42, section (3), lines 20-25. This section would allow the division to arbitrarily set hospital rates for services provided to the injured worker. Chad Smith will explain in more detail our problem with this section and will request your consideration for an amendment, however, I must once again state the hospital industry's adamant opposition to governmental non-negotiated rate setting of any kind.

Earlier in the session, a rate setting bill, House Bill 128, was tabled by you and your colleagues on the House Human Services Committee. Chairman Kitselman, Representatives Brown, Grinde, Hanson, McCormick and Simon all voted to table House Bill 128.

We do not believe, and I am sure the division will confirm this, that the division has the resources to establish a rate setting methodology. You will note in the fiscal note to SB 315, page 7-B,

DWC - Regulate Hospital Costs

An appropriation request for \$55,903 (FY 88) and \$47,397 (FY 89).

Ladies and Gentlemen, I propose that if the division were serious about setting hospital rates or regulating hospital rates, they will need three to four times more than that. Setting hospital rates is a very complex matter. The age and mix of fixed assets, utilization, purchasing and warehousing practices are among some of the problems that must be faced. If rates are merely set at statewide averages, it is almost certain that half the hospitals would gain and half would lose.

The fairest and most responsible method of setting hospital rates is to continue to allow local, uncompensated, not-for-profit Boards of Trustees to use their knowledge to establish hospital charges for their own hospitals. These Boards protect the interests of all the people utilizing the services of the hospital.

If the division cannot set rates because of the complexity of the rate setting methodologies, it is permitted by section 3, page 42 of the bill to piggyback on the "ratesetting" function of other public agencies. In this case, it would likely be the Medicaid Bureau. The Medicaid Bureau intends to implement a DRG-based prospective payment system sometime in 1987. DRGs or diagnostic related groups in the reimbursement scheme have been used since October 1983 for Medicare. It assigns all medical conditions to one of 370 DRGs and reimburses

hospitals for the care of patients on a predetermined basis. DRGs are not without flaws - serious flaws. They were designed primarily to address the medical conditions of Medicare-aged patients. DRGs focus on average medical and surgical conditions for the elderly. Most of the inpatient workers' compensation claims will be for trauma and the balance for rehabilitation. DRGs are not designed to deal with trauma. There is too much variability among trauma cases to say that any one case is typical or represents an average. DRGs are an unacceptable basis of reimbursement for trauma cases and could put hospitals in serious financial jeopardy.

In summary, let me say again, we support the bill. We want to work with workers' compensation to reduce its expenses and hopefully, achieve a leveling off or reduction in future premiums paid by all employers, but we cannot tolerate a reimbursement system that would lower the quality of care and the intensity of services that we must provide to the injured workers.

I now ask Chad Smith to present the amendments that the hospitals of Montana wish the committee to consider.

I would urge your concurrence of SB 315 with the Montana Hospital Association amendments.

EXHIBIT 3
DATE 3-9-87
SB SB 315

SENATE BILL NO. 315

Third Reading Copy

Amend as follows:

1. On page 42, strike lines 20 through 25 in their entirety;
2. On page 43, strike lines 1 through 7 in their entirety.

Offered by

MONTANA HOSPITAL ASSOCIATION
Chadwick H. Smith,
Registered Lobbyist

4
3-9-87
HB SB 315

MONTANA MUNICIPAL INSURANCE AUTHORITY
Post Office Box 1704
Helena, MT 59624

March 6, 1987

The Honorable Les Kitselman
Montana Representative
Business & Labor Committee
Capitol Station
Helena, MT 59620

Re: SB 315--Workers' Compensation Revision

Dear Chairman Kitselman:

On behalf of the Montana Municipal Insurance Authority (Authority), the administrative arm of the self-insurance pool created by various cities and towns in Montana, I am writing this letter in support of SB 315 which is an Act to generally revise the workers' compensation laws in Montana.

The Authority's workers' compensation program presently has 74 participating cities and towns across Montana, and additional members are continuing to join for the 1987-88 fiscal year. Due to the ever increasing expansion of benefits and coverage for injured workers the premiums these cities and towns were required to pay the State Compensation Insurance Fund became prohibitive and they were forced to form their own self-insurance program. However, even the presently existing self-insurance program continually feels the pressure to raise premiums. Furthermore, self-insurance pools are required to carry reinsurance for excess coverage, and the premiums being charged by reinsurance companies are literally skyrocketing. Those reinsurance companies perceive a large risk under the present state of Montana workers' compensation law.

SB 315 is a responsible and fair piece of legislation not only for employers and insurers, but it also continues to protect the working men and women of this state. SB 315 eliminates the required liberal construction of workers' compensation law in favor of the claimant, and imposes an interpretation which favors neither party to a dispute under Montana's workers' compensation law. SB 315, unlike present law, provides for permanent partial disability benefits only if a worker shows that an injury has resulted in a demonstrable actual wage loss. This eliminates speculative awards and is only fair. SB 315 allows lump sums only if the insurer and the claimant agree that it is the best method to resolve a dispute, as opposed to existing law where lump sums appear to be the rule rather than the exception. SB 315 provides an extensive rehabilitation package in an attempt to get injured workers back to their job markets. Finally, SB 315 takes a substantial step toward reducing litigation as it requires all

The Honorable Les Kitselman
March 6, 1987
Page Two

parties to a dispute to first submit to mandatory non-binding mediation prior to availing themselves of the procedures of the Workers' Compensation Court. Certainly an alternative dispute resolution mechanism cannot be adverse to either the interests of the employer or claimant.

Montana's cities and towns, like other employers in Montana, face the heavy burden of increasing workers' compensation premiums. An attempt to stem the expansion of coverage, benefits and litigation in this area surely is a step in the right direction for not only Montana's cities and towns, but all citizens of Montana. The Authority supports passage of SB 315.

Sincerely,

MONTANA MUNICIPAL INSURANCE AUTHORITY

By Alec Hansen
Alec Hansen, Executive Director

cc: All Members of House Business & Labor Committee

MONTANA CHIROPRACTIC ASSOCIATION

EXHIBIT 5
DATE 3-9-87
SB 315

TESTIMONY, SENATE BILL 315

MARCH 9, 1987

SUBMITTED BY: BONNIE TIPPY, LOBBYIST, THE MONTANA CHIROPRACTIC ASSOCIATION

We support the concept of reformation of the worker's compensation laws in the state of Montana. We know that a Senate subcommittee has worked very hard to come up with a good bill for your consideration, but hope that this committee would consider a technical amendment.

The problem we have with the bill as it is written is that it only allows impairment ratings to be done by medical doctors. Many other types of health care professionals are the primary treating providers in cases of injured workers. Examples would be audiologists, physical therapists, and, of course chiropractors. Chiropractors treat many, many injured workers. Is it really fair that an impairment rating be done by a medical doctor in these cases? We believe that this is unfair both to the treating providers as well as to the injured worker.

The amendment I am offering for your consideration today will not change the fact that the department is going to be able to appoint all of the people who do impairment ratings. We have no quarrel with that at all. The only thing this amendment does is require that that appointed person be of the same discipline as the treating health care provider. This amendment in no way changes the process by which impairment ratings are done. The American Medical Association has established guides for doing impairment ratings, and any of the many types of health care providers can and do use this guide. I would ask this committee to accept this amendment, and realize that in comparison to the overall scope of this bill it is very small indeed. But please do not overlook its importance to our association.

AMENDMENTS, SENATE BILL 315
SUBMITTED BY: THE MONTANA CHIROPRACTIC ASSOCIATION
March 9, 1987

Amend SB 315, third reading bill, as follows:

Page 13, line 4

Following: line 3

Insert: "NEW SECTION. Section 20. Medical evidence defined. "Medical evidence" means the testimony of a physician or other licensed practitioner of one of healing arts.

Renumber: following sections

Page 40, line 22

Following: line 21

Strike: "physician"

Insert: "primary health care provider"

Following " Title 37"

Strike: "chapter 3"

Insert: "of the same discipline or specialty as the claimant's treating physician"

Page 40, line 23

Following: "from the"

Strike: "board of medical examiners"

Insert: "licensing board for the profession involved"

UTICK & GROSFIELD
ATTORNEYS AT LAW

Mailing Address. Both Locations:
Post Office Box 512
Helena, Montana 59624-0512

ANDREW J. UTICK, P.S.C.
NORMAN H. GROSFIELD, P.S.C.

EXHIBIT 6
DATE 3-9-87
SB 315

Helena Office:
314 North Main Street
Telephone (406) 443-7250

Billings Office:
208 North 29th Street
Telephone (406) 256-5707

March 5, 1987

RE: STATUS OF MONTANA WORKERS' COMPENSATION "REFORM LEGISLATION" - SUMMARY OF
SENATE BILL 315, AS AMENDED AND PASSED BY THE STATE SENATE

Senate Bill 315, as amended by the Senate Labor and Employment Relations Committee, would make many changes to the provisions of the current Workers' Compensation Act. Primarily, the changes would result in a reduction of types of injuries covered and benefit levels in order to reduce the high cost of workers' compensation insurance for Montana employers. An analysis of the major proposed changes is set forth below.

Benefit Reductions, Restrictions on Covered Injuries, and Other Restrictions

Injury Definition [39-71-119] - changes would result in a stricter definition of injury. It would preclude coverage for repetitive trauma and would put restrictive language in for cardiovascular, pulmonary, respiratory, stroke, and heart conditions. It would also specifically preclude coverage for emotional or mental stress. Repetitive trauma would now be covered under the Occupational Disease Act.

Aggravation of Preexisting Conditions, Proof of [39-71-407] - a stricter proof requirement would be placed in the law in relation to injuries involving aggravation of preexisting conditions. Currently, the proof requirement regarding an aggravation is a medical "possibility". The new proof requirement would require a "probable" medical test.

Subrogation [39-71-414] - currently, in cases in which a third party has caused an injury, the workers' compensation insurer is entitled to a certain percentage against any third party recovery. However, through court decisions, such a recovery can take place only when a claimant has been 'made whole'. The new law would not require a claimant to be made whole, and would allow an insurer to recover the full amount set forth in statute against a third party recovery or settlement.

Attorney Fee Assessment Against Insurer [39-71-611 and 612] - restrictions would be placed on the recovery of attorney fees against an insurer, should a case go to hearing before the Workers' Compensation Court. Currently, if an insurer loses a case, attorney fees are automatically paid to the successful claimant. Under the proposal, a claimant could recover only if it was found that an insurer was unreasonable in the adjusting of a claim. However, costs of litigation would be assessed as previously allowed.

Maximum Benefit Level Freeze [39-71-701, 702, 703, and 721] - maximum weekly benefit amount would be frozen at the current level until June 30, 1989, which would limit the annual increases based on increases in the State's average weekly wage as set forth in current law.

Partial Disability [39-71-703] - there would be a substantial revision in permanent partial benefit awards. Currently, a claimant may recover a "wage loss award" for establishing a true wage loss as a result of an injury, or can recover an "indemnity award" for prospective loss of future earning capacity, which takes into consideration several different factors in addition to a medical impairment rating. Also, claimants are entitled to automatic impairment (Holton) awards based on uncontested impairment ratings issued by physicians, although such impairment awards are included in the calculation of either a wage loss or indemnity award and are not in addition thereto. Indemnity awards will be eliminated, and a claimant would be entitled to only an actual wage loss award, entitled "wage supplement benefits," or an impairment award, or both. Impairment awards are generally relatively small, in that they relate only to medical evaluations regarding anatomical limitations, and do not address the effect an injury has on a worker's future ability to compete in the normal labor market. Wage supplement benefits would be limited to 500 weeks from the date of maximum healing, minus any weeks paid for an impairment award, and failure to sustain a wage loss would not extend the period of eligibility.

Termination of Certain Benefits Upon Retirement [39-71-710] - the change would result in a termination of permanent partial wage loss (wage supplement) benefits to a worker who begins receiving or becomes eligible for Social Security retirement benefits. Currently, workers can receive such benefits for up to 500 weeks, even though they are on Social Security retirement benefits.

Incarcerated, Benefits Not Due While [NEW SECTION] - Except for medical costs, no benefit payments would be due while a claimant is incarcerated for a felony.

Death Benefits [39-71-721] - currently, death benefits are paid to a surviving spouse until death or remarriage, and to children until the age of 18, or 25 if in an accredited school. A two-year lump sum payment is also due upon remarriage of the spouse. The proposed law would restrict payments to a maximum of 500 weeks, or until the youngest child reaches age 18, or 22 if in an accredited school, and would eliminate the two-year lump sum amount upon remarriage.

Temporary Total Benefits - Starting Date [39-71-736] - temporary total disability benefits are currently paid from the first date of disability as long as a claimant is off work more than five days. The new law would change benefit payments so that such payments would be made starting with the 7th day of wage loss, as opposed to the 1st day.

Settlements and Lump Sum Payments [39-71-741] - lump sum payments and settlements would be restricted to only those cases in which a claimant and an insurer can agree to the settlement. Except for some limited authority in the permanent total area up to a maximum of \$20,000, the Workers' Compensation Court would not have authority to grant lump sum payments. Should a claimant and insurer agree to a settlement, it would still be subject to Division approval, although much of the restrictive and complex language passed in 1985 regarding approval would be eliminated.

Benefits While on Rehabilitation Program - Reduction [39-71-1003 and NEW SECTION] - currently, temporary total disability payments are made to a claimant undergoing vocational rehabilitation. The new proposal would reduce payments to the maximum permanent partial rate and would require a claimant to contribute a portion of his permanent partial wage loss (wage supplement) benefits to the rehabilitation effort.

Liberal Construction Mandate - Elimination of [39-71-104 and 39-72-104] - the statutes providing that the Workers' Compensation and Occupational Disease Acts be liberally construed, and through case law meaning that they be liberally construed in favor of the claimant, will be repealed. The effect of such repeals will

presumably be that on close questions of law, the claimant will not prevail unless the claimant has clearly met the burden of proof test.

Benefit Increases Or Other Added Protections

Protection for Filing Claim and Job Preference [NEW SECTION] - a provision would be added preventing employers from terminating a worker for merely filing a claim. Further, there would be a preference placed in the law for workers who are capable of returning to work, assuming there are positions open for the worker.

Permanent Total Cost-of-Living Allowance [39-71-702] - a cost-of-living increase would be placed in the law for permanent total disability cases. Such cost-of-living increase would provide for up to a 3% annual increase and no more than ten yearly adjustments. Currently, there are no cost-of-living adjustments in the law.

Permanent Partial - Elimination of Schedule [39-71-703] - there would be some increase in permanent partial wage loss (wage supplement) and impairment awards for workers suffering extremity injuries (arms, hands, legs, and feet), due to the elimination of the schedule and placing all injuries on a 500-week maximum recovery potential.

Changes In The Structure And Administration Of The Act

Mandatory, Nonbinding Arbitration for Initial Dispute Resolution [NEW SECTION] - Before one can take a case to the Workers' Compensation Court, the party will have to proceed through a mandatory nonbinding mediation system, whereby the parties will have to, in good faith, attempt to resolve the case outside of the formal litigation arena.

Uninsured Employer Fund Payout [39-71-503] - the uninsured employers' fund would be structured in such a way that surpluses and reserves would not have to be kept and the fund could be administered on a cash-in, cash-out basis. Currently, there are amounts in the fund, but the present language in the law prevents payment from the fund because of the surplus and reserve requirement. At least some uninsured employees will receive a percentage of their benefits under the new proposal, although there are no new provisions adding additional revenue sources.

Impairment Panels [NEW SECTION] - Impairment panels will be established whereby physicians will be appointed to the panels for the evaluation of permanent impairment. Such a system will exist only if the claimant and the insurer cannot agree to the degree of an impairment.

Rehabilitation Procedure [NEW SECTION] - A detailed rehabilitation system is being proposed whereby workers will be required to proceed through a rehabilitation analysis and program, with various remedies provided in the law should a worker not cooperate with the system.

Workers' Compensation Court [39-71-2901, 2903, and NEW SECTION] - the Workers' Compensation Court has been given greater powers over proceedings and enforcement of orders, and will be bound by the common law and statutory rules of evidence. In addition, a rule 11, M.R.Civ.P. requirement is placed in the law for signing of pleadings filed with the Court. [Lawyers beware]

Effective Date

After July 1, 1987, the disputed resolution provisions would apply to all injuries, regardless of date of occurrence. All other changes would apply only to injuries and diseases occurring after June 30, 1987.

the assault was intentional from the standpoint of the employer.³⁰¹

The employer is protected from actions by injured workers for injuries covered under the Workers' Compensation Act, i.e., injuries arising out of and in the course of employment. However, no protection is provided for negligent or malicious acts towards an employee having no connection with the employment. Thus, when an employer renders medical aid or attention to a claimant on a voluntary and gratuitous basis, even though such action is not required, the employer is bound to exercise reasonable care in the selection of a competent physician, and failure to do so subjects the employer to a damage action.³⁰² (Also, an employer is not protected from intentional injury. However, "intentional" is not to be construed as gross, willful, deliberate, intentional, reckless, culpable, malicious negligence, breach of statute, or other misconduct of an employer short of "genuine intentional injury".³⁰³)

§ 10.20 Against Uninsured Employer

Prior to the creation of the Uninsured Employers Fund, an injured worker could file a common law action against an employer that was uninsured,³⁰⁴ and uninsured employers were subject to a misdemeanor charge.³⁰⁵ Such remedies, however, proved inadequate.

In 1977, the Montana Legislature created the Uninsured Employers Fund. The purpose of the Fund is to pay injured employees of uninsured employers the same benefits that such employees would receive if

301. McGrew v. Consolidated Freightways, Inc., 141 Mont. 324, 377 P.2d 350 (1963).

302. Vesel v. Jardine Mining Co., 110 Mont. 82, 100 P.2d 75 (1940).

303. Enberg v. The Anaconda Co., 158 Mont. 135, 489 P.2d 1036 (1971). The distinction is between intentional versus the accidental quality of the precise event producing the injury. The intentional removal of a safety device or toleration of a dangerous condition, resulting in a subsequent injury, cannot be said to be a deliberate infliction of harm comparable to a deliberate assault.

304. Laws of Montana (1915), Ch. 96, Sec. 3 (repealed 1977).

305. Id.

From Workers Comp Manual
By Norman Grosfield



DATE 3-9-87
SB SB 315

JAMES W. MURRY
EXECUTIVE SECRETARY

Box 1176, Helena, Montana

ZIP CODE 59624
406/442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 315 BEFORE THE HOUSE BUSINESS AND
LABOR COMMITTEE, MARCH 9, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME IS JIM
MURRY AND I AM THE EXECUTIVE SECRETARY OF THE MONTANA STATE AFL-CIO. WE
ARE HERE TODAY TO TESTIFY IN OPPOSITION TO SENATE BILL 315.

THIS MEASURE IS BEING TOUTED AS A WORKERS' COMPENSATION COMPROMISE
BILL THAT BALANCES THE NEED TO REFORM THE CURRENT WORKERS' COMPENSATION
SYSTEM WITH THE NEEDS OF INJURED WORKERS. HOWEVER, IT IS OUR OPINION THAT
THE PRIMARY PARTY BEING COMPROMISED BY SENATE BILL 315 ARE THE INJURED WORKERS
THEMSELVES.

WE OPPOSE SENATE BILL 315 BECAUSE UNDER ITS PROVISIONS TOTAL WORKERS'
BENEFITS WILL BE REDUCED BY APPROXIMATELY 30 PERCENT. THE REDEFINITION OF
INJURY WOULD ELIMINATE COMPENSATION FOR REPETITIVE TRAUMA. THIS REDEFINITION
ALSO PLACES RESTRICTIVE LANGUAGE ON COMPENSATION FOR PULMONARY, CARDIOVASCULAR,
RESPIRATORY, STROKE AND HEART CONDITIONS. IT WOULD ABOLISH COVERAGE FOR
EMOTIONAL AND MENTAL STRESS DISEASES. BENEFITS TO WIDOWS WOULD BE DRASTICALLY
REDUCED AND LUMP SUM SETTLEMENTS WOULD BE RESTRICTED TO ONLY THOSE CASES
WHERE THE CLAIMANT AND THE INSURER AGREE ON A SETTLEMENT.

THESE ARE JUST A FEW AREAS WHERE INJURED WORKERS AND THEIR SURVIVORS
ARE ASKED TO MAKE SUBSTANTIAL SACRIFICES. CLEARLY, SB 315 TAKES A GIANT
STEP TOWARDS DISMANTLING ONE OF THE MOST COMPREHENSIVE WORKERS' COMPENSATION
PROGRAMS IN THE NATION. WE ARE DEEPLY CONCERNED OVER THE SACRIFICES THAT
MONTANA WORKERS WILL BE FORCED TO MAKE.

MARCH 9, 1987

MEMBERS OF THE COMMITTEE, TO APPRECIATE HOW SIGNIFICANT THESE "REFORMS" ARE, IT IS IMPORTANT TO UNDERSTAND THE HISTORY SURROUNDING WORKERS' COMPENSATION LAWS IN OUR STATE.

BACK IN 1969, WE BEGAN TO SEE SOME DRAMATIC IMPROVEMENTS IN MONTANA'S WORKERS' COMPENSATION ACT. THE MONTANA STATE AFL-CIO PARTICIPATED WITH THE GOVERNOR'S ADVISORY COUNCILS IN MAKING RECOMMENDATIONS FOR CHANGES IN MONTANA'S WORKERS' COMPENSATION SYSTEM.

THESE COUNCILS WERE COMPRISED OF MEMBERS FROM THE BUSINESS COMMUNITY, THE INSURANCE INDUSTRY, SELF-INSURERS, BOTH CLAIMANTS AND DEFENSE ATTORNEYS, AGRICULTURE AND ORGANIZED LABOR. THE ADVISORY COUNCILS' RECOMMENDATIONS WERE BASED UPON OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION GUIDELINES WHICH MANDATED THAT STATES MAKE SUBSTANTIAL IMPROVEMENTS IN THEIR WORKERS' COMPENSATION LAWS OR BE FACED WITH THE THREAT OF FEDERAL INTERVENTION.

THE MONTANA LEGISLATURE RESPONDED TO THE ADVISORY COUNCILS' RECOMMENDATIONS BY RESPONSIBLY CREATING ONE OF THE BEST WORKERS' COMPENSATION LAWS IN THE COUNTRY.

AND MONTANA WORKERS RESPONDED FAVORABLY TO THE CHANGES AS THEY CONTINUE TO BE ONE OF THE MOST PRODUCTIVE WORKFORCES IN THE NATION. ACCORDING TO AN INC. MAGAZINE SURVEY IN OCTOBER OF 1985, MONTANA WORKERS ACHIEVED THE FOURTH HIGHEST RANK IN THE NATION IN VALUE ADDED PER WORKER PER YEAR.

TODAY, WITH BURGEONING DEFICITS IN EXCESS OF \$100 MILLION, WE ARE TOLD THAT THE SYSTEM IS IN NEED OF RADICAL REFORM IN ORDER FOR IT TO SURVIVE. CHARGES HAVE BEEN LEVELED THAT COURT DECISIONS AND ATTORNEY INVOLVEMENT HAVE LED TO EXCESSIVE JUDGEMENTS. ALSO, THERE HAVE BEEN RUMORS OF MAJOR ABUSE AND POSSIBLE FRAUD WITHIN THE WORKERS' COMPENSATION SYSTEM.

IN EARLIER SENATE COMMITTEE HEARINGS ON SENATE BILLS 315 AND 330, THERE WERE CHARGES RAISED THAT WORKERS THEMSELVES WERE DEFRAUDING THE SYSTEM. WE CERTAINLY DO NOT APPROVE OF THIS BEHAVIOR, AND WE FEEL THAT THE PERSONS MAKING THESE ACCUSATIONS SHOULD COME FORWARD AND TELL YOU, THE MEMBERS OF

THIS COMMITTEE, ALL THEY KNOW ABOUT SPECIFIC INSTANCES WHERE WORKERS WERE ABUSING THE SYSTEM. MOREOVER, THE COSTS OF THIS ALLEGED ABUSE TO THE SYSTEM NEEDS TO BE QUANTIFIED.

THESE RUMORS ARE JUST NOT FROM UNIDENTIFIED SOURCES -- THEY COME FROM KNOWLEDGEABLE PEOPLE IN RESPONSIBLE POSITIONS. IN FACT, ONE OF THE MOST OUTSPOKEN LEADERS EXPRESSING CONCERN OVER POSSIBLE ABUSES IS REPRESENTATIVE BOB MARKS, SPEAKER OF THE MONTANA HOUSE OF REPRESENTATIVES.

IN A FEBRUARY 1, 1987, ASSOCIATED PRESS STORY, REPRESENTATIVE MARKS EXPRESSED CONCERNS OVER "INDICATIONS OF QUESTIONABLE PAYMENTS FROM THE WORKERS' COMPENSATION FUND." REPRESENTATIVE MARKS SAID IN THAT SAME AP STORY, AND I QUOTE, "IF THESE CONCERNS ARE GENUINE, THERE IS A HIGH INDICATION TO ME, THAT THERE IS FRAUD."

ON THE FOLLOWING MONDAY, DURING A MEETING OF THE LEGISLATIVE AUDIT COMMITTEE, LEGISLATIVE AUDITOR SCOTT SEACAT STATED AND WE AGREE WITH HIM, THAT THE LEGISLATORS NEED "ASSURANCE THAT THERE ARE NO MAJOR ADMINISTRATIVE PROBLEMS IN THE WORKERS' COMPENSATION SYSTEM BEFORE THEY UNDERTAKE MAJOR REFORMS OF THE SYSTEM."

MR. CHAIRMAN, THIS COMMITTEE IS SERIOUSLY CONSIDERING THE MOST DRAMATIC CHANGES CONTEMPLATED IN THE ACT'S HISTORY. THE CHANGES THAT YOU ARE CONSIDERING ARE NOT ONLY DRAMATIC AS COMPARED TO PAST CHANGES, BUT ARE TRAUMATIC TO THE INJURED WORKERS THAT ARE BEING ASKED TO MAKE SUCH SIGNIFICANT SACRIFICES. WE AGREE WITH MR. SEACAT THAT ALL THE CARDS MUST BE ON THE TABLE BEFORE WE UNDERTAKE SUCH MAJOR REFORMS OF THE SYSTEM.

WE HOPE YOU WILL CONSIDER CALLING REPRESENTATIVE MARKS BEFORE YOUR COMMITTEE TO DISCUSS AT LENGTH HIS ALLEGATIONS. BECAUSE IT IS IMPERATIVE THAT YOU HAVE ALL INFORMATION AVAILABLE REGARDING POSSIBLE FRAUD AND ABUSE BEFORE YOU PROCEED WITH DISMANTLING THE LAW. AND IF THERE IS NO BASIS FOR THESE CHARGES -- THE ALLEGATIONS SHOULD BE LAID TO REST ONCE AND FOR ALL.

HOWEVER, WE BELIEVE THAT MANY PROBLEMS CONTRIBUTING TO THE WORKERS' COMPENSATION "CRISIS" HAVE NOTHING TO DO WITH POSSIBLE FRAUD OR ABUSE. IN FACT, WE BELIEVE THAT MANY OF THE PROBLEMS EXIST BECAUSE OF MISMANAGEMENT AND ADMINISTRATIVE ERRORS. WE ARE DEEPLY DISTURBED THAT THESE ISSUES AND THEIR COSTS TO THE SYSTEM HAVE BEEN LARGELY IGNORED.

WE HAVE RECEIVED NUMEROUS COMPLAINTS FROM INJURED WORKERS THAT THE CURRENT SYSTEM DOES NOT EFFECTIVELY RESPOND TO THEIR NEEDS. FOR EXAMPLE, WE'VE BEEN TOLD THAT WORKERS HAVE CALLED THE DIVISION OFFICE LONG DISTANCE, AT THEIR OWN EXPENSE, AND HAVE BEEN PUT ON HOLD INDEFINITELY AND FINALLY CUT-OFF.

WORKERS REPEATEDLY SAY THAT EVEN AFTER TIME CONSUMING NEGOTIATIONS, THEY HAVE NOT RECEIVED THEIR LEGITIMATE BENEFITS AND THAT THE DIVISION FAILS TO RESPOND TO THEIR COMPLAINTS. MANY, AFTER BEING SWEEPED ASIDE BY THE SYSTEM, HAVE NO OTHER ALTERNATIVE BUT TO HIRE AN ATTORNEY.

IN OTHER WORDS, CLAIMANTS ARE BEING FORCED BY THE SYSTEM TO HIRE AN ATTORNEY IN ORDER TO OBTAIN THE BENEFITS THEY ARE ENTITLED TO UNDER THE LAW. FOR EXAMPLE, A FEBRUARY 8 MISSOULIAN LETTER, WHICH IS ATTACHED TO THIS TESTIMONY, POIGNANTLY DESCRIBES THE FRUSTRATIONS THAT AN INJURED WORKER SUFFERED IN DEALING WITH THE SYSTEM. HE HAD NO CHOICE BUT TO RETAIN AN ATTORNEY TO GET THE BENEFITS HE WAS LEGITIMATELY ENTITLED TO.

REPRESENTATIVE JERRY DRISCOLL, PRESIDENT OF THE MONTANA STATE AFL-CIO, REPEATEDLY REQUESTED INFORMATION ON THE NUMBER OF EMPLOYERS WHO ARE ILLEGALLY NOT PAYING THEIR WORKERS' COMPENSATION PREMIUMS. THE DIVISION TOOK MONTHS TO PROVIDE THIS INFORMATION TO REPRESENTATIVE DRISCOLL, CONTENDING THAT THE DATA WAS UNAVAILABLE. OBVIOUSLY, THIS IS AN EXAMPLE OF THE ADMINISTRATION NOT EVEN BEING ABLE TO ADDRESS A MAJOR COST FACTOR.

SO THERE HAS NOT BEEN A CONCERTED EFFORT MADE BY THE WORKERS' COMPENSATION DIVISION TO INVESTIGATE THESE ADMINISTRATIVE PROBLEMS AND THEIR POTENTIAL COSTS TO THE SYSTEM. UNTIL THESE COSTS ARE ASCERTAINED, WE SHOULD NOT CURTAIL

NECESSARY AND LEGITIMATE BENEFITS TO INJURED WORKERS.

IT IS ALSO OUR CONCERN THAT PREMIUM LEVELS ARE NOT HIGH ENOUGH TO ADEQUATELY FUND THE SYSTEM. TESTIMONY IN AN EARLIER HEARING INDICATED THAT THE WORKERS' COMPENSATION DIVISION DELIBERATELY REFUSED TO ASSESS PREMIUMS AT LEVELS SUFFICIENT TO FUND THE SYSTEM. ACCORDING TO TESTIMONY, THIS ACTION WAS TAKEN, IN SPITE OF THE STATE FUND'S OWN INDEPENDENT ACTUARIAL ADVICE. THE IMPACT OF INSUFFICIENT PREMIUM LEVELS ON THE DEFICIT, SEEMS TO HAVE ALSO BEEN IGNORED.

THE MONTANA STATE AFL-CIO HAS RECEIVED MANY COMPLAINTS FROM WORKERS WHO HAVE BEEN INJURED AND SUBSEQUENTLY FORCED INTO REHABILITATION PROGRAMS. THESE REHABILITATION REVIEWS AND PROGRAMS HAVE BEEN OF NEGLIGABLE ASSISTANCE IN ACUTALLY RETURNING INJURED WORKERS TO FULLY PRODUCTIVE EMPLOYMENT. THE ONLY CRITERIA FOR JUDGING THE SUCCESS OF THESE REHABILITATIVE PROGRAMS SHOULD BE THE RETURN OF THESE WORKERS TO PRODUCTIVE EMPLOYMENT, AND ANYTHING SHORT OF THIS GOAL MERELY ADDS UNNECESSARY COSTS TO THE SYSTEM. IF, AFTER A DETAILED ANALYSIS, THESE COSTS ARE PROVEN TO BE UNNECESSARY, THEN WE WOULD SUGGEST THAT COST CUTTING BE MADE IN THIS AREA.

MR. CHAIRMAN, WE RECOGNIZE THAT THE CURRENT WORKERS' COMPENSATION SYSTEM NEEDS REFORM. THAT'S WHY THE MONTANA STATE AFL-CIO TOOK A VERY ACTIVE PART IN THE DELIBERATIONS OF THE GOVERNOR'S WORKERS' COMPENSATION ADVISORY COUNCIL. IN FACT, OUR PPEIDENT, JERRY DRISCOLL, SERVED AS A MEMBER OF THIS COUNCIL.

BUT WE ARE HERE BEFORE YOU TODAY TO EXPRESS OUR CONCERN THAT MANY OF THE PROBLEMS CONTRIBUTING TO THE WORKERS' COMPENSATION "CRISIS" HAVE NOT YET BEEN CLEARLY IDENTIFIED. WE URGE YOU TO INVESTIGATE THESE PROBLEMS BEFORE YOU PROCEED WITH GUTTING MONTANA'S WORKERS' COMPENSATION LAW.

IN CLOSING, MUCH HAS BEEN SAID ABOUT THE "EXCLUSIVE REMEDY" THAT EXISTS IN THE WORKERS' COMPENSATION LAW. THAT REMEDY, PROVIDED BY OUR CURRENT LAW, APPEARS TO BE IN JEOPARDY UNDER THE PROVISIONS OF SB 315. IF THAT

MARCH 9, 1967

IS IN FACT THE CASE, THEN THE LEGISLATURE MAY VERY WELL BE CAUSING AN ADDITIONAL PROBLEM IN TERMS OF CREATING EXCESSIVE LITIGATION, RATHER THAN SOLVING A PROBLEM, IF YOU PROCEED IN PASSING THIS BILL.

WE URGE YOUR CONSIDERATION OF THE WORKERS WHO ARE INJURED, MADE SICK AND MANY TIMES DIE ON THEIR JOBS ALL ACROSS MONTANA.

An injured system

As an injured worker, I would like to offer this concerning our present problem concerning the Workers' Compensation system.

Like any "business" when it has failed to perform as required, the blame for its success or failure is inevitably and justifiably placed firmly on the shoulders of its management!

As a manager myself for some 14 years in the automotive profession, I have never seen the customers blamed or punished because the business lost money or was strangled by its procedures.

For 20 years I have worked and supported myself and later my family with never a problem with injury or inability to do so until through a job-related back injury, I was forced out of work to have surgery.

Suddenly I was forced to deal with the system I had quietly ignored for all of these years.

It is like a nightmare that you hope to awake from at any moment. There is a maze of procedures, paperwork, and delay that is incomprehensible until experienced.

The "voices" over the phone at the Workers' Compensation Division won't give you any information until your human identity has been wrenched from you and replaced by some computer claim number, which takes what seems to be an eternity when the rent and bills are not being paid.

My first payment took approximately eight long weeks, and was far short of what it should have been. After much time and paperwork proving my entitlement to a larger weekly rate, I was granted and later denied a small increase. More appeals, documents and proof later, I was still told they were unable to get someone to make the proper decision.

Out of desperation, I was forced to hire an attorney by the very system that makes so much noise about lawyers and their fees.

Shortly, I was paid the back amount

owed and my weekly rate was raised to its correct amount. Without my lawyer, I quite literally would have been thrown out of my house, sued by bill collectors, and simply up the proverbial creek.

Rather than punish the "customers" and lay blame on the lawyers that are helping them, let's fix the mess in Helena and run the Workers' Compensation Division as it was intended, for those unfortunate people who are forced to utilize its intended purpose, to help the injured worker! — Len Anderson, 103 Peterson Place, Stevensville.

Missoulian, Sunday, February 8, 1987.

TESTIMONY OF JAY REARDON ON SENATE BILL 315 BEFORE THE HOUSE
BUSINESS AND LABOR COMMITTEE, MARCH 9, 1987

EX-110
3-9-87
SB 315

Mr. Chairman, members of the Committee, my name is Jay Reardon, and I am the President of Local 72 of the United Steelworkers of America. I represent 225 workers at ASARCO'S East Helena Plant.

I come before you today to voice my opposition to SB 315. My biggest concern lies in the substantial changes in the definition of injury in this bill. The language placed in the law precluding repetitive trauma and restricting the coverage for cardiovascular, pulmonary, respiratory, stroke and heart conditions.

Recently, workers I represent were asked to take substantial cuts in wages and benefits, in the name of corporate survival. They made these sacrifices. Now, with this bill, as it is today, they will go to work and continue to breathe and be exposed to toxic gases and industrial poisons without the current protections they have under the law to cover the long-term effects of these exposures. It is ironic that because of the nature of the industry, we work in, it is necessary to wear respiratory protection which in itself may cause heart problems over the long-run because of the strain it puts on the cardiovascular system.

Because of the complicated nature of the workers compensation law, workers do not fully understand the changes in the law that this bill will make. I want to know that when an injured worker comes to me in the future and asks why he doesn't have the coverage the law used to provide; how I'm supposed to tell him he's out-of-luck! Also, that same worker is going to be coming to you his or her representative and asking why? And I don't believe that we are going to have a fair or just answer to give that worker.

In closing, I would ask that you consider the sacrifices that workers in this state have made already and that this bill goes too far in asking workers to sacrifice too much.

ARE YOU AWARE?

In 1973 the state of Montana enacted a law of non-liability of insured employers. This law states:

An employer is not subject to any liability whatever for the death or personal injury to an employee covered by Workers' Comp.

This law has been interpreted to mean:

An employer is protected from actions by injured workers no matter how gross, willful, deliberate, reckless, culpable, malicious negligence, breach of statute, or other misconduct of an employer, short of genuine intentional injury.

39-71-411, Section 1, Chapter 493.

Norman Grosfield's Book, P. 74.

What it means is this:

As an employer I can, and some do, operate my business as unsafely and irresponsibly as I want. I can remove safety guards and refuse to repair equipment which is hazardous to the safety of my employees. I can injure, maim and kill my employees and I am protected from any liability or responsibility for these inhumane acts.

This law was amended in 1979, but only to provide more protection for the employer. You might say: that's not true we're protected by OSHA. Well, I called them and here's what I found.

First they regulate safety standards of 25 to 30 thousand employers in Montana. OSHA has six inspectors in Montana, three for safety and three for health. They can only inspect the same employer once every three years. Employers to be inspected each year are selected at random by a computer. Unless your employer has a high injury record the chances of inspection more than once or twice in ten years is slim. I asked if all injuries were reported to OSHA and was told no, only if there is a death or five or more people are injured in the same accident.

Doesn't seem to be much protection as far as a safe place to work if you rely on this organization to assure safe employment practices.

At present our legislators are debating Senate Bill 315. What is this bill and why am I so concerned you might ask.

Well, I would be more than happy to inform you.

Senate Bill 315 is the bill proposed to get rid of the Worker's Compensation Court under the pretense Worker's Comp. is approximately \$100 million in debt because of this court's outrageous awards to injured workers.

Here's a few facts and figures I have been made aware of that leads me to believe our present government and its administration is deceiving us.

Out of all the Worker's Compensation claims filed only one-tenth of 1% go to court. 571 cases were filed last year with only 92 of these cases coming before the Court. 72% of the 92 cases were found in favor of the insurance company.

These figures are from the Worker's Compensation Court files. What it comes down to is out of every 10,000 claims 100 go to court and 28 people win their cases.

I ask "where did all that money really go?"

Now let's take a closer look at Senate Bill 315 and see what it really is.

First is the proposal to establish a panel to determine an injured worker's degree of physical impairment. This impairment rating will be used to determine the injured worker's entitlement to benefits.

This panel of doctors will be chosen by the Division of Worker's Comp. You will not be allowed to choose your doctor. Isn't there the possibility by appointing suitably conservative M.D.'s the right to a just and fair impairment rating may be hampered or even meaningless.

Next is the proposal to enact a vocational panel or board that will (with the impairment rating from the Division's conservative Doctor's panel) determine the injured worker's entitlement to loss wages and other benefits.

Here we go again, another panel chosen by the Division, paid by the Division and the possibility again of one-sided decisions.

Now comes the provision for a fee schedule for medical bills. Apparently, if the doctor and hospitals charge more than the schedule allows the injured worker must pay the difference. Fair isn't it? If you are injured because of your employer's unsafe practices you get to pay part of the bill.

Folks, this is just a start, what about taking away widow death benefits for her and her children if she remarries. Plus the proposed decrease of survivor benefits. This is great. Dump them on Welfare, and let the taxpayer pick up Worker's Compensation's responsibilities.

Now, Worker's compensation wants laws to cut rehabilitation costs by cutting rehab to 26 weeks, half the time most courses take to complete.

If you want to complete the course pay for it yourself, as you can't get a lump sum settlement to do it. Injured and without income, how do I pay for this? Also Bill 315 would allow the state rehabilitation to force injured employees to take courses the state wants and would refuse the injured a choice in his rehabilitation. This could be done by the threat of stopping his benefits. Don't think this won't happen, it happened to me three times under the current program and if Senate Bill 315 passes into law it will protect this abuse by rehabilitation.

And this is just a small part of Senate Bill 315. There are approximately 100 pages of this kind of abusive garbage in this bill.

Let's put a stop to the intentional abuse of people's rights to fair and just treatment.

Let's put a stop to laws that protect abusers of fair and safe working conditions.

Let's get rid of laws that justify injuring, maiming, and killing by irresponsible employers.

Let's get rid of Senate Bill 315 and start making people (employees, employers and Worker's Compensation) responsible for their actions.

Let's quit dumping the injured on the taxpayer by putting them on Welfare and Social Security disability. And don't think this isn't happening "I'm living proof".

Remember, if you vote this into law, that the next victim by this society may be your wife, your brother, your sister, your children, your grandchildren, or frightening thought, yourself. You may be the next one to be physically abused and further mentally abused by an unjust, corrupt, uncaring system and you have to be the one to answer for your actions and to justify your actions for putting this into law. May the people of this state, your loved ones and the people who have elected you to represent their best interests have the strength and heart to forgive you, because I can't.



DATE 3-31-87
MONTANA STATE BUILDING & CONSTRUCTION TRADES COUNCIL

IN AFFILIATION WITH

THE NATIONAL BUILDING & CONSTRUCTION TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR — CONGRESS OF INDUSTRIAL ORGANIZATIONS

Don Gimbel

Secretary-Treasurer Dan Jones

February 16, 1987

Hon. J.D. Lynch, Chairman
Senate Labor and Employment
Relations Committee
Capitol Station
Helena MT 59620

Dear Senator Lynch:

On Saturday, February 14, 1987 I presented testimony before you and your committee on SB 315 and SB 330.

My comments centered around the abuses of employers who do not pay premiums to Workers' Compensation as required by state law, especially in the construction and logging industries.

There seem to be a number of methods by which an employer can do this, but one of the most blatant is for an employer to tell their workers that they are independent contractors. When employees complain that they need and want workers' compensation coverage, they are told not to worry; that if they get hurt on the job that the employer does not have to turn in coverage reports to Workers' Compensation for up to three months, and that they will be put down as an employee if they are injured on the job.

I believe that this practice is used a great deal by non-union contractors in order to achieve a competitive edge over union contractors who the union can check for benefit coverage.

I also believe that this practice is used much more widely than is believed and that it is costing the Workers' Compensation Fund millions of dollars and forcing fair contractors to pay higher premiums as a result.

I am formally requesting that you, as Chairman of the Senate Labor and Employment Relations Committee, have the State Department of Labor investigate this practice.

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page two

I am enclosing copies of the materials which I used in my testimony, and which you have requested.

If I can provide you with further information, please let me know.

Sincerely,


Eugene Fenderson
Lobbyist

EF/bcs

Enclosures

cc: Senate Labor and
Employment Relations Committee

AMENDMENT TO SENATE BILL 315

EXHIBIT 12
DATE 3-9-87
SB 315

Be Amended as Follows:

1. Page 15, following line 3.

Insert: "(3) An employer who knowingly does not comply with section 39-71-401, MCA, regarding mandatory coverage of employees for workers' compensation purposes, or who willfully refuses to pay premiums to a compensation plan number 2 workers' compensation insurance carrier or the state compensation insurance fund, may be guilty of theft under section 45-6-301, MCA. A county attorney may initiate criminal proceedings against such employer, or in the case of a corporation, against the principal officers of the corporation."

Legal fees listed for comp cases

By TOM COOK
Gazette Helena Bureau

HELENA — Of the 296 lawyers involved in workers' compensation settlements last year, 17 of them handled 36 percent of the cases and accounted for 40 percent of the money involved in the settlements, a report to the Senate Labor Committee shows.

Workers' Compensation Administrator Bob Robinson, who compiled the report at the request of the committee, said the state spent \$666,558 in legal fees to defend disputed cases.

"We have no way of providing exact information as to the amount of legal fees paid by claimants or assessed against insurers by the court," Robinson said Tuesday in an interview.

But based on a random sample of cases studied by the division, Robinson estimated that 24 percent of the settlement amounts for claimants represented by lawyers went to pay legal bills.

About \$38 million in settlements were made in 1986 by the state workers' comp fund, private insurance carriers and self-insured employers, Robinson said. That means about \$9.1 million went to private lawyers involved in comp settlements.

The division keeps records on settlements that don't go to court, which totaled \$30 million last year. Robinson estimated that another \$8 million was awarded by courts.

Most private lawyers involved in work-comp cases last year handled fewer than five and in many cases only one settlement, according to the report.

Seventeen lawyers handled more than 20 cases apiece with the highest number handled by John Bothe, of Columbia Falls, who was involved in 76 settlements, according to the report.

The highest amount of settlement awards involved Tom Lewis, of Great Falls, who handled 49 settlements totaling \$2.1 million.

Here is a list of the 17 lawyers with more than 20 settlements reached before the case went to court, and the dollar amount of those settlements:

- Monte Beck, Bozeman, 23 cases, \$534,826.
- John Bothe, Columbia Falls, 76, \$1.8 million.
- Thomas Buiman, Missoula, 30, \$302,942.
- Milt Datsopoulos, Missoula, 39, \$626,514.
- Ben Everett, Anaconda, 22, \$658,416.
- Norman Grosfield, Helena, 28, \$644,599.
- Victor Halverson, Billings, 45, \$916,375.
- James Harrington, Butte, 24, \$490,848.
- Gene Jarussi, Billings, 22, \$456,705.
- Neil Keefer, Billings, 30, \$558,150.
- Robert Kelleher, Billings, 23, \$412,543.
- Tom Lewis, Great Falls, 49, \$2.1 million.
- Tom Lynaugh, Billings, 28, \$462,626.
- Gene Picotte, Montana City, 34, \$958,455.
- Mike Preezeau, Whitefish, 22, \$397,000.
- Pat Sheehy, Billings, 27, \$583,022.
- Robert Skaggs, Billings, 24, \$476,314.

Har

The last
reflect
rises to

EXHIBIT
TE 3-9-87
SB315

DATE 3-9-87

HB 58315

I-28.1

39-71-411. Provisions of chapter exclusive remedy --
no liability of insured employer.

Tortious conduct by insurer. Bad faith by an insurer in the settlement process is an independent tort which is not barred by the exclusive remedy provision of this section. Birkenbuel v. Montana State Compensation Insurance Fund, 42 St. Rep. 1647 (1984).

Intentional harm demand necessary. An employee receiving workers' compensation benefits must allege specific intentional harm directed at himself, and where no genuine issues of material fact are presented, the District Court was correct in granting Summary Judgment against the employee. Noonan v. Spring Creek Forest Products, Inc., 42 St. Rep. 759 (1985).

July 1985 Supplement

I-28

WORKERS' COMPENSATION ACT

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under this chapter does not entitle such officer to elect not to be bound as an employee under this chapter. In any case, the notice must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private corporations not to be bound as an employee to assure compliance with this chapter.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

Collateral references: *Grosfield*, § 2.12; 1C *Larson*, §§ 54.00-54.23.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

Failure to comply with accident reporting and notification requirements—not remove employee from coverage. The fact that an insured employer failed to properly file a report of injury under Section 39-71-307, and failed to provide written notice of denial of a claim under Section 39-71-606, does not remove the employee from coverage under the Workers' Compensation Act and thus subjecting the employer to a tort action. *Jacques v. Nelson*, 180 Mont. 415, 591 P.2d 186 (1979).

Action against employer for assault. A discharged employee's sole remedy against former employer for alleged acts constituting assaults by supervisory employee was under the Workers' Compensation Act. *Brown v. Stauffer Chemical Co.*, 167 Mont. 418, 539 P.2d 374 (1975).

RANDAL J. NOONAN,

BEST COPY AVAILABLE

Plaintiff, and Appellant,

Submitted: Mar. 28, 1985

Decided: May 24, 1985

SPRING CREEK FOREST PRODUCTS, INC.,

a Montana corporation, and ROBERT

ULRICH,

Defendants and Respondents.

WORKERS' COMPENSATION--DAMAGES; Appeal from order dismissing civil action for damages based on intentional tort. [The District Court granted the employer's motion for summary judgment upon the grounds that there were no genuine issues of material fact on whether the harm suffered was maliciously and specifically directed at the plaintiff out of which such specific intentional harm the plaintiff received injuries as a proximate result. The Supreme Court held that where an employee's allegations go no further than to charge an employer with knowledge of a hazardous machine, the complaint does not state a cause outside the purview of our exclusive remedy statute, and the district court correctly construed the intentional harm exception to the exclusivity provision of the Workers' Compensation Act.]

Appeal from the Thirteenth Judicial District Court, Yellowstone County, Hon. Robert Holmstrom, Judge.

For Appellant: Moulton, Bellingham, Longo & Mather, Billings

For Respondents: Crowley, Haughey, Hanson, Toole & Dietrich, Billings

Mr. Brent R. Cromley argued the case orally for Appellant; Mr. L. Randall Bishop for Respondents.

Opinion by Chief Justice Turnage; Justices Weber and Gulbrandson concur. Justice Morrison specially concurs and filed an opinion. Justice Sheehy dissents and filed an opinion. Justice Hunt dissents and filed an opinion in which Justice Harrison joins.

Affirmed.

WITNESS STATEMENT

NAME Herb H Nash BILL NO. SB315
ADDRESS Box 480 Diamond Road DATE 3/9/87
WHOM DO YOU REPRESENT? Law Forest Products
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Just to deliver 40,000 MM Board ft of Logs to our mill
Cost 7,200,000 MM dollars x .29%, 1986 Rate, = 2,088,000 MM dollars
We pay out to contractors to deliver logs. With the Jan 1,
1987 rate increase we will pay an added 432,000 MM dollars.
With the anticipated rate increase in July raising the
Rate to 43%, we would be impacted 1,152,000 Million dollars
from the 1986 Rate. Our employees just took a wage decrease
so we could break even or make a small profit. The increasing
Rate increase has more than taken any wage cut we received
from our employees. We may have to ask for another wage
cut. We currently have 120 employees which took an average
wage cut of \$1.15/hr. An employee works about 2080 hrs
per year which equals \$289,600 savings.

I support S. 315 as is

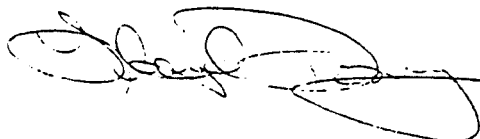
MY NAME IS LLOYD DONEY AND I AM THE PERSONNEL AGENT AT
ASARCO TROY UNIT. 350 PEOPLE ARE EMPLOYED AT THE UNIT.
I AM TESTIFYING IN FAVOR OF SB 315.

BEFORE COMING TO MONTANA I WAS PERSONNEL AGENT IN IDAHO.
I WANT TO STATE THAT LAST YEAR IDAHO REFUNDED \$4.2 MILLION
DOLLARS TO ITS WORKERS'S COMPENSATION POLICY HOLDERS. IT
DID THIS UNDER A SYSTEM THAT CAN ACTUALLY PAY MORE IN WEEKLY
COMPENSATION BENEFITS THAN MONTANA.

SB 315 IS GOOD BECAUSE IT PROMOTES THE EMPLOYER-EMPLOYEE
RELATIONSHIP RATHER THAN THE PRESENT SYSTEM THAT TENDS TO
DESTROY IT. IT TELLS THE INJURED WORKER HE IS TO RETURN TO
WORK AND NOT LOOL TOWARD THE SYSTEM AS SOME SORT OF A
WELFARE PROGRAM. THE PROPOSED LEGISLATION WILL DECREASE
ATTORNEY INVOLVEMENT AND THEREBY DECREASE COSTS TO THE SYSTEM.

FINALLY, SB 315 PROMOTES THE PHILOSOPHICAL UNDERPINNINGS OF
WORKER'S COMPENSATION, IE. TO HELP THE INJURED WORKER AND
GET HIM/HER BACK TO THE WORKPLACE.

REFORM IS NEEDED. A BAND-AID APPROACH IS NOT THE SOLUTION.
SB 315 WILL FORM THE BASIS FOR LOWERING RATES AND I URGE
PASSAGE OF COMPROMISE SB 315 WITHOUT AMENDMENT.



WITNESS STATEMENT

DATE 3-9-87
SB 315

NAME [Signature] BILL NO. 31

ADDRESS [Signature] DATE 3-9

WHOM DO YOU REPRESENT? [Signature]

SUPPORT 2 OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WORKERS' COMPENSATION

39-71-401

increased the assessment amount from \$25 to

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and may not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. SENATE BILL NO. 315

DATE MARCH 9, 1987

SPONSOR SENATOR BOB WILLIAMS

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

BUSINESS AND LABOR

COMMITTEE

BILL NO. SENATE BILL NO. 315

DATE MARCH 9, 1987

SPONSOR SENATOR BOB WILLIAMS

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Harold Canale	Albany Marine Assoc.	✓	
James T. ...	Alb. State Y. Conference	✓	
Charles W. ...	United Food & Commercial Workers		✓
SL & ...	Alb. Chamber of Commerce	✓	
DAN ...	Long Island ...	C	
Tim ...	MSARCO, INC.	✓	
John ...	M. E. P. ...	✓	
Wm. ...	Alb. ...	✓	
Ken ...	...	✓	
Joe ...	...	✓	
Ted ...	Regional Assoc. ...	✓	
...	...		
...	SELF		✓
...	SELF		✓
...	...		✓
...	...		
Jim ...	Merit. AFL-CIO	✓	✓
...	...	✓	
CHADWICK N. SMITH	Me. Hosp Ass'n	✓/and ...	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MEETING MINUTES
WORKERS COMPENSATION SUBCOMMITTEE
MARCH 18, 1987

The meeting of the Workers' Compensation Subcommittee was called to order at 12:35 p.m. on March 18, 1987 in room 437 of the state capitol building by Chairman Bill Glaser.

All members were present.

SENATE BILL 315

(5a:000) Betsy Griffing, staff attorney, Legislative Council, presented the committee with exhibit 1 on a two-thirds vote for change in Workers' Compensation (WC) subrogation statute, section 12 of SB 315, amending section 39-71-414, MCA. The issue is whether a change in subrogation laws would require the two-thirds vote and is it an express dollar limit for compensatory damages. She stated her interpretation is that since the change in subrogation is not an expressed dollar limit on compensatory damages for a particular cause of action, a two-thirds vote is not necessary. She added that while the claimant may receive a smaller proportion of the damages awarded in a third party action, the amount of damages resulting from the action itself is not necessarily limited by the proposed change.

(5a:028) Rep Driscoll stated the wrongful discharge bill that was passed out of the house that did not have an actual dollar limit but stated three (3) years wages, and also needed a two-thirds vote. He stated this legislation limits the amount of money an injured worker will receive. He said it doesn't say expressed dollar limitations, but if a bill needs to have a dollar limit in order for the two-thirds vote, then he felt the people who pushed CI-30 hookwinked the public. He stated that if this legislation was not changed in subcommittee he would try to divide the question on the floor. He noted page 24 lines 18 - 25 are not part of the Workers' Compensation Advisory Council (WCAC) recommendations, but was inserted by the division.

Uninsured

(5a:070) Jim Murray, bureau chief of the State Fund, noted the change made in page 25 sec 13, 39-71-502 which will allow the division to pay some benefits out of the uninsured fund to injured workers whose employer did not provide coverage. Presently, because the uninsured fund is required to keep proper surpluses and reserves, which is the stricken language in the bill. In 1981 the administrator declared the fund insolvent because the amount of money available was not sufficient to pay all the reserves and liabilities incurred by the fund. In order to pay those benefits this language was inserted to allow the fund to operate on a cash basis and pay off compensation and medical benefits.

Attorneys

(5a:107) Bob Robinson, administrator of the Workers' Compensation Division, (WCD), presented an overview of section 16 of the legislation. He stated the language developed by the Workers' Compensation Advisory Council (WCAC) is fairly intact as they had recommended. It basically states that costs of attorney fees will be assessed only when the insurer has been judged to have taken an unreasonable position relative to the payment of the benefits. He added that the legislation includes that a finding of unreasonableness by the court does not mean the insurer has acted in bad faith.

Mr Robinson continued with section 18 of the bill that has two (2) amendments. Basically the legislation states that when an attorney represents a claimant, that claimant/attorney relationship will be provided on a form provided by the division. He noted that currently it take 1.0 FTE to regularly monitor attorney fee agreements for compliance with the rules and the law. He said by having the attorney and claimant using this form describing the relationship would save staff time. The forms would need to be checked for proper completion, and there would not be the need for research for these agreements. The legislation also clarifies up front that the attorney would be paid on the additional benefits that the claimant gained due to the efforts of the attorney.

Mr Robinson the commented on section 19 on the assessed attorney fees. This requires the documentation of attorney time and multiplied against an hourly rate and this assessment is assessed against the insurer if they were unreasonable in the courts decision. He added the amount assessed against the insurer and paid by the insurer is netted against the amount that the claimant would have to pay.

(5a:191) Rep Driscoll noted that the language on page 28 concerning attorney's fees was developed by the WCAC because the division thought there were some abuses by some attorneys. At that time it was in a bill that was thought to be 330, and there were lump sums possible under that bill. He said the attorneys working for the claimant always work on a percentage of their lump sum and not a percentage of their temporary total. He stated with the almost elimination of partials and lump sums, the claimant will not be able to get an attorney because he will be in there trying to sue for temporary total benefits. He said if the claimant wins those and might be eligible for the 500 weeks of benefits, those benefits are paid out in such small amounts the attorney will not be able to take a percentage or the injured worker will be on welfare. He stated now attorneys are completely eliminated from the plaintiff's side. He stated the subcommittee should reinsert the stricken language on page 28 lines 3 - 8 and remove the other language on the page through pages 29 and 30 so that if the insurer

denies liability and the case is later judged compensable, the insurer would have to pay the attorney's fees because there is no lump sum settlements.

In response to questions from Chairman Glaser, Mr Robinson stated new rules were filed on Monday stating that the attorney can receive 20% of the additional benefits gained through his efforts if the case does not go to hearing and 25% if the additional benefits are gained by a decision of the WC court or the supreme court. The hourly rate established is to not exceed \$75.00 an hour. The total dollars cannot exceed the contingency fee rates of 20% or 25%. He added that most of the attorneys representing claimants, especially those who specialize in the business who handle the bulk of the business know the system very well. Agreements with the claimant and attorney on biweekly checks usually state the percentage that will go to the attorney. He added that the checks are actually sent to the attorney, who cashes the check, takes his percentage and sends the remainder to the claimant.

Rep Driscoll stated the department has the authority to stop checks from going to the attorney's office first on temporary total checks where there is a contingency agreement in effect.

George Wood, _____ Association, added the checks are sent to where ever the claimant directs.

(5a:324) George Wood stated the question of the attorneys fees has always been a problem, and his association has taken the position that they are not a collector of anybody's bill, so they do not split the check and then mail them. In cases where the attorney requests the check to be sent to his office, he does not think it is just. He stated one case that he talks about all the time in which a man was on compensation for a heart attack for a long time and was totally disabled and finally died as a result of the heart condition. The association sent the widow a letter and stated they would continue with the payment of compensation if she would file a beneficiary form. She went to an attorney and those checks are still going to the attorney's office. He noted the legislation contains a provision of the payment of impairment in a lump sum. He said Rep Driscoll was referring to cases that primarily deal with denial of liability, or temporary total. Mr Wood stated that if there is establishment of claim undoubtedly there will be permanent impairment where lump sums are available. If this is established, he is establishing the temporary total and the impairment. Under a contingency agreement Mr Wood believed the claimant would be entitled to compensation on all.

Rep Driscoll stated that under that section there is not going to be very much money. He stated a 10% impairment is

equal to 50 weeks times \$149.50 maximum is \$7,000. He stated the legislation greatly limits impairment.

Mr Wood stated the legislation does not limit the impairment a bit. He added the council recommended that no impairment was to be paid.

(5a:385) Mr Robinson commented on section 20 as a major compromise for labor in the WCAC recommendations arising from two (2) major problems have developed over time. There have been claims made that when an individual is injured and files a claim, the employer fires them because they have filed a WC claim. This legislation makes it clear that an employer cannot terminate a worker just for filing a claim. He stated that the legislation also states that if an injured worker is capable to of returning to work is capable to work within two (2) years of the date of injury, that worker is given a preference over new hires for comparable positions that become vacant over that period of time. Those positions have to be consistent with their abilities and the worker has to show that he is substantially equally qualified as the other applicants. Disputes over this are not in perview of the WC court and would be handled in district court.

Chairman Glaser stated that this means that if an individual can come back to work they can "bump" someone that has been hired in the meantime.

Mr Robinson clarified that they cannot "bump" another individual, but that they have a preference over new hires for substantially comparable positions.

Chairman Glaser noted the legislation states preference over new hires for comparable positions that became vacant within such a two (2) year period. He stated he felt it referred to the same two (2) year period.

Mr Robinson stated the two (2) year time frame was the same, but this referred to other vacancies. He presented a scenario that if he personally was in a car accident and unable to work, another individual would be permanently in his position. If after 1 1/2 years he was able to go back to work, he would have six (6) months where he would have a preference over new hires for other openings within the division. He stated this was the intent of the legislation, and hoped that the language was clear.

Compensation

(5a:465) Mr Robinson then presented an overview of the sections of the bill dealing with compensation. Section 21 deals with injuries that produce temporary total disability. During this period of time the individual is eligible for maximum benefits calculated at two-thirds of their wage received at the time of injury subject to the maximum of the

state average weekly wage, which is currently \$299.00. If they are earning over \$450 then they run into the cap. There is no cost of living allowance (COLA) involved. The legislation also calls for a two (2) year freeze of the state's average weekly wage at \$299.00.

(5a:589) Mr Robinson then continued with section 22 which describes the determination of compensation for permanent total disability. He noted the permanent total wage replacement is the same as temporary total. There is a COLA adjustment for these benefits limited to no more than ten (10) adjustments after 104 weeks of benefits have been paid, payable on the next July 1. The adjustments must be the percentage increase in the state average weekly wage or 3%, whichever is less. He stated this was a major compromise and provides for a more humane system of compensation and reduces the need for lump sum settlements. [There is a two (2) year freeze in benefits in this area also.]

Mr Robinson went on with section 23 dealing with permanent partial disabilities compensation. This is an injury that is permanent in nature but only partially debilitating. He stated most of the injuries covered are partials. He stated the legislation proposes two (2) fold benefits. Temporary total benefits are paid up to the time of maximum healing. At that time an impairment evaluation is conducted by a physician as to the loss of body function. That percentage of disability is then applied to the 500 weeks of benefits. He said a 10% impairment translates to 10% of 500 weeks at the individuals rate payable to the claimant any way they prefer to receive them - lump sum or biweekly payment. To the extent that a certain number of weeks are paid on a lump sum basis, the individual is then eligible for wage loss supplements for the remainder between the difference of 500 weeks less the number of weeks that the impairment award is paid.

(5b:000) Rep Driscoll stated the impairment rate paid to the claimant is discounted at present value, a reduction in payments. Mr Robinson concurred.

Mr Robinson another concept that is included in this area that is different from the current law is an expansion of benefits. The current law has a schedule has a schedule of injuries included where specific injuries are eligible for a maximum number of benefits. The new legislation eliminates the schedule of injuries and provides individuals with up to 500 weeks of benefits as long as there is documented wage loss due to the injury.

(5b:035) He noted the wage loss calculation is different than the present situation. The wage loss calculation is the difference between what the person used to earn and what they are judged capable of earning. Two third of that amount is paid to an individual as an incentive to try to

find employment, they are not compensated for not trying to find work.

Mr Robinson stated the senate had amended the bill on page 37 paragraph V to clarify same injury site versus "same body area".

Mr Robinson continued with section 24 on impairment evaluation. He stated the senate changed paragraph 2 line 10 concerning disagreement on impairment and the described the procedure on resolution. It was noted that page 4 line 1, 3b(ii) and 3b(iii) were incorrect.

(5b:200) Section 25 on freezing rates for medical, hospital and related services was the next area of discussion. Mr Robinson stated the with the present system medical providers set rates and submit them to the division. This legislation calls for a system of rates to be established by the division for payment to medical providers, and establishes a two (2) year freeze on those rates.

(5b:243) Mr Robinson spoke briefly on section 26 dealing with language on the clarification for disfigurement.

Mr Robinson stated section 27 is a major change from the current system. Currently a permanently totally disabled individual receiving benefits are entitled to 500 weeks of partial benefits at age 65. He said there was nothing in the law that says that is the case. He stated section 710 in the current law does not establish this provision of entitlement. This became the practice based on the transition from lifetime benefits to retirement benefits.

(5b:268) Rep Driscoll commented that this was legislative intent from 1981. When legislation was brought in to reduce these people to partials benefits, as they used to receive full disability benefits as long as they lived, a compromise was reached for the current system.

Mr Robinson rebutted that the division has not been able to find that intent in the minutes, and this is not established in the law. He added the a supreme court decision last fall stated that 500 weeks of partial benefits at age 65. He said some private insurers who do not pay, and state fund had generally paid. He stated it has been a dispute for two (2) or three (3) years. He said the issue here was if a person receives permanent total benefits is he entitled to a lump sum at retirement as well as retirement benefits.

(5b:310) Section 28 of the legislation deals with the payment of benefits to an individual who is incarcerated. The WCAC recommends that benefits not be paid to an individual who is incarcerated because they are not eligible to participate in the work force and therefore are not eligible for benefits on a wage loss situation.

Mr Robinson then covered the changes in section 29 dealing with payment to beneficiaries. The legislation provides for 500 weeks of benefits to a spouse or until she remarries, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to unmarried children under the age of 18 years or an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program. The rate is the state's average weekly wage, with no COLA.

(5b:380) Rep Driscoll noted that payments end for a spouse who does not have children and remarries within the 500 week period. He was concerned with extra martial arrangements that would benefit the spouse as far as collection of the benefits was concerned.

(5b:405) Mr Robinson went on to section 30 on the reduction of benefits. Currently when an individual is injured, after they have been off work for five (5) days or more, compensation goes back and pays at the first day of loss. The legislation contains an employee deductible in that no compensation may be paid for the first six (6) days of work loss. Compensation begins on the seventh day instead of being retroactively paid from the first day of loss.

He continued with section 31 on compensation running consecutively and not concurrently. This is in relation to sick benefits that are paid by the employer that would be available to an injured worker as well as compensation benefits.

(5b:523) Mr Robinson then presented an overview of the lump sum benefits provided in the legislation. He stated major compromises were made in this section in the senate. Language submitted by the department stated that there was no lump sum settlements of benefits for partial injuries with the exception of the impairment and in the case of a permanent total, the maximum lump sum would be \$20,000 and based on some criterion. He noted the language in the bill provided "common sense" in relation to the current complicated and ambiguous system for lump sum settlements.

(6a:000) Rep Driscoll presented the scenario of a 45 year old individual who was totally permanently disabled, received the \$20,000 interest bearing loan, and benefits were cut off at age 65. He noted on page 55 lines 11 - 15 state the repayment period will be the life expectancy, which most tables go to age 72, so the individual would not get all his money back.

Mr Robinson stated that paragraph above the noted section, paragraph 5a, should be tied in with 5c. He stated for those individuals whose benefits would expire at age 65, bill - i do not understand this point of issue and the tape has too much room interference - i cant hear what he is saying. please

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fill in for me - thanks - However, if the projected compensation period is the claimants lifetime, (those folks injured prior to 1981) life expectancy must be determined.

Jim Murray, WCD, noted this language was in the bill just in case there are people that would not be eligible for Social Security. The 65 is tied to when a person is eligible for Social Security retirement. He said you may very well have an injured employee who is ineligible for Social Security retirement and therefore would be eligible for lifetime benefits under workers compensation.

Rep Driscoll questioned if the claimant dies early if the division would sue his widow or what would happen if the claimant committed suicide.

Mr Robinson stated that was the risk the claimant took.

Rep Driscoll stated maybe the interested rate should be elevated. He stated he wanted the committee to understand totally permanently disabled so called "lump sums" were interest bearing loans. They are tied to last years ten year treasury bill which was about 8%. If this law was in effect now someone who becomes a totally permanently disabled worker is getting the \$20,000 at 8% interest.

Mr Robinson stated lump sums could be considered in that light, but that they are an advance on a benefit owed someone down the line, repaid at interest, and that the time value of money is being reflected.

(6a:045) Mr Robinson wanted the committee to be aware of the fact that in the original SB315 gave the division authority to follow up on lump sum settlements. This legislation gives the division full power, authority, and jurisdiction to allow, approve, or condition compromise settlements or lump-sum advances agreed to by workers and insurers if the division wants to condition the settlement on this authority.

Rep Driscoll stated the he could not see why this condition needed to be in legislation, noting the only way the department could loose was if the claimant dies.

(6a:097) George Wood noted this legislation was a good package where many compromises had been made.

(6a:108) Mr Robinson stated that injuries are categorized into four areas: a physical event causing a physical result, a physical event causing a mental result, a mental event causing a physical result, and a mental event causing a mental result. Under this legislation the only definition excluded is a mental event causing a mental result, i.e. stress. In the case of a heart attack, a physician would have to make the determination this was work related.

In response to a question from Rep Driscoll, stated individuals partially disabled by an occupational disease receive two (2) types of benefits: temporary total with medical and permanent total. In the case of an occupational disease that was not totally permanently disabling, an individual would receive temporary total benefits and medical coverage after maximum medical recovery.

Rep Driscoll suggested the committee review page 3 line 6 and asked for the wording "without regard to fault" be stricken from the bill.

Chairman Glaser stated this suggestion would be taken under advisement.

The meeting was adjourned at 2:20 (6a:244)

Bill Glaser, Chairman

bg/gmc/3.18 DRAFT

DAILY ROLL CALL

WORKERS COMPENSATION SUBCOMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date

March 18, 1937

[illegible]

- 315
SB 315

Memo to House Subcommittee on Labor
3-18-87

Betsy Griffing, staff attorney, Legislative Council

Re: Two-thirds vote for change in Workers' Compensation subrogation statute, Section 12 of SB 315, amending section 39-71-414, MCA.

As passed by the voters last November, Article II, Section 16, of the Montana Constitution now provides:

"Section 16. The administration of justice. (1) Courts of justice shall be open to every person, and speedy remedy afforded for injury of person, property, or character. Right and justice shall be administered without sale, denial, or delay.

(2) No person shall be deprived of legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state.

(3) This section shall not be construed as a limitation upon the authority of the legislature to enact statutes establishing, limiting, modifying, or abolishing remedies, claims for relief, damages, or allocations of responsibility for damages in any civil proceeding; except that any express dollar limits on compensatory damages for actual economic loss for bodily injury must be approved by a 2/3 vote of each house of the legislature." *

ISSUE: Whether a proposed change in the Workers' Compensation subrogation statute, section 71-39-414, that would allow an insurer to subrogate in situations where case law previously disallowed subrogation, requires a two-thirds vote of each house?

DISCUSSION: A two-thirds vote is not necessary because the proposed change does not impose an "express dollar limit on compensatory damages." Although a claimant may receive a smaller proportion of the damages awarded in a third-party action, the amount of damages resulting from the cause of action is not limited by the proposed change.

VISITORS' REGISTER

WORKERS COMPENSATION SUB COMMITTEE

BILL NO. SB 315

DATE March 1 / 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
CHAD SMITH	MONT HOSP ASSN	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MEETING MINUTES
WORKERS COMPENSATION SUBCOMMITTEE
MARCH 19, 1987

The meeting of the Workers' Compensation subcommittee was called to order at 12:40 p.m. on March 19, 1987 in room 312f of the state capitol building by Chairman Glaser.

Rep Grinde was excused, all other members were present.

SENATE BILL 315

(6a:300) Chad Smith, Montana Hospital Association, read his prepared text, exhibit 2, in support of amending SB 315 to delete section 25 which begins on page 41, line 11. This section proposes on page 42 to establish rates for hospital services for treatment of injured workers, and proposes on page 43 to freeze all charges by medical providers for a period of two (2) years beginning January, 1988. The association's stance is that neither of these proposals are just or necessary, and Mr Smith briefly covered six (6) points in his testimony in support of that conclusion.

(6a:507) Rep Nisbet asked is there was a conflict between what had been added on page 42 in subsection 3 and what is contained in 39-71-309. He asked if there were any codification instructions that would indicate which two (2) sections of the law would be followed. Bob Robinson, administrator of the Workers' Compensation Division (WCD), answered that this section was put into the legislation on the advice of the Workers Compensation Advisory Council (WCAC), He added that in recognizing the cost situation that all insurers are facing, roughly 25% of the cost of an accident are medical and hospital expenses.

(6a:556) Mr Robinson stated the department proposes to piggy back on an existing rate system, i.e. medicaid or the Montana Rate Review system. He stated he did not want to create "new staff" to establish rates for medical providers.

(6a:581) Mr Smith noted his association was concerned with having to seek the balance of charges not paid from the injured worker. He stated they felt that would be contrary to the general intent of this act. He stated they would be applying a hardship on that individual, since he is already out of work, and they would be putting pressure on the injured worker's other property for payment of charges.

(6a:615) Rep Nisbet asked if the utilization of the Hospital Rate Review System would be acceptable to the hospital

association. Mr Smith noted that not all of the hospitals in the state are under this review system.

(6b:000) Jim Murphy, bureau chief of the State Fund, WCD, stated by law a medical provider cannot charge an injured worker for services that are not covered by insurance.

Mr Smith stated there is no statute in law stating that.

George Wood, Montana Self Insurers Association, noted that in the event that an insurer accepts liability for the claim, no charges will be made to the injured worker. He said the subsequent section states in the event of a dispute between the provider of the medical benefits and the payee, it is a matter of a dispute for hearing.

Discussion continued on the adoption of a fee schedule for medical providers and the current fee system provided by medical providers,

Mr Smith noted that the doctor prescribes the hospital and services to be provided to the injured worker, that the hospital does not have the opportunity to decide what services will be performed. He also stated hospitals can accept assignment of payment in full and also bill the claimant.

(6b:070) Rep Smith stated he could not believe that any hospital, on a large hospital bill, would give up an assignment from an insurance company to go after an injured worker. Mr Smith stated they have the opportunity, and it would depend on the individual hospital, the extent of the charge, the liability the hospital assumes by treating the individual. He added the position of the hospitals is generally that they will not turn down any patient, and in exchange for that they expect to be paid a fair rate for treatment of that individual, not a discounted amount.

Rehabilitation

(6b:084) Jim Murray then presented an overview of section 34 through 47 on rehabilitation. He covered graphs and charts relative to the WC system, noting a 352% increase since 1979 on temporary total claims. He also described court cases that have impacted the system. He stated the new law ties rehabilitation to benefits.

(6b:215) He stated the legislation provides for an evaluation by a rehab provider based on criteria and priorities of section 36 of the legislation, taken in order. The bill provides for 26 weeks for the evaluation, and the division can extend that period of time. The injured worker receives

total rehabilitation benefits, or the temporary total rate, during that time.

(6b:303) Mr Murray continued that while the injured worker is in training, he would still receive permanent partial benefits, topped off by partial rehabilitation benefits, which would get the injured worker back to the temporary total maximum rate again. After training the worker would then be eligible for the remaining 500 weeks of wage supplemental benefits based on a determination of wage loss.

Mr Murray continued with section 46 on auxiliary rehab benefits, up to a \$4,000 limit, which would be paid by the insurer.

(6b:374) Rep Driscoll asked for clarification of the term "implement a rehabilitation program". Mr Murphy stated that it would be anything that would be appropriate in this section to meet those priorities.

Discussion continued on scenarios of injured workers and the system of services that would be provided over time lines established in the bill, on incentives in the system for the insurer and the injured worker, and the resolution of disputes over rehabilitation programs.

Occupational Diseases

(6b:566) Discussion followed on the payment schedule of benefits to those injured through occupational diseases, the differences between high and low paying jobs in the determination of benefits, comparison of the system as it operates today and what is and is not changed under the legislation.

Mr Murphy stated there may be a need to take of technical problems, including some concerning 309.

(7a:022) Rep Driscoll asked for Betsy Griffing, staff attorney, Legislative Council, to determine if there was a need to amend the unemployment insurance law; which currently states if you are drawing permanent partial benefits and you are laid off your job, you can also draw unemployment insurance.

(7a:066) Mr Fenderson, _____, where is he from?, present a situation he was aware of where an individual was injured on the job, went back to work, and after eight (8) years of problems with his injury, was unable to perform his job. He has applied for benefits but was unable to live on the amount determined for compensation. He then returned to work under very painful circumstances, and is currently working under those circumstances. Discussion

continued on this situation and the determination of premiums on the older rates.

(7a:211) Rep Driscoll stated this instance was another case of a worker not getting an attorney to represent him and being taken by the system.

The meeting was adjourned at 2:00 p.m. (7a:230)

Bill Glaser, Chairman

bg/gmc/3.19 DRAFT

DAILY ROLL CALL

WORKERS COMPENSATION

SUBCOMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date

March 19, 1937

[illegible]

3-19-87
2-23-85

Amendments to Senate Bill 315
Third reading copy (blue)
House Labor Subcommittee

1. Page 16, line 13.
Strike: "(6)"
Insert: (d)
2. Page 32, line 3.
Strike: "39-71-61"
Insert: "39-71-611"
3. Page 35, line 17.
Following: "more"
Strike: "that"
Insert: "than"
4. Page 35, line 22.
Following: "subsection (3)"
Insert: "and subsection (5)"
5. Page 36, lines 4 and 5.
Following: "disability"
Insert: "--impairment awards and wage supplements."
6. Page 39, line 14.
Following: "request of"
Strike: "he"
Insert: "the"
7. Page 39, line 23.
Strike: "10"
Insert: "30"
8. Page 40, line 25.
Strike: "a workers'"
Insert: "the"
9. Page 41, line 1.
Following: "subsection"
Strike: "(3)(b)(ii) or (3)(b)(iii)"
Insert: "(3)(b)(i) or (3)(b)(ii)"
10. Page 41, line 4.
Following: "subsection"
Strike: "(3)(b)(iii)"
Insert: "(3)(b)(ii)"
11. Page 67, line 15.
Strike: "nd"
Insert: "and"

12. Page 83, line 16.
Following: "employment"
Strike: "harm"
Insert: "injury"

13. Page 92.
Following line 7.
Insert: "(2) Section 8 is intended to be codified as an
integral part of Title 39, chapter 71, part 2, and the
provisions of Title 39, chapter 71, part 2, apply to section
8."

5 - 3/5

STATEMENT IN SUPPORT OF AMENDMENTS TO THIRD READING COPY
OF SENATE BILL 315

Senate Bill 315 should be amended to delete Section 25 which begins on page 41, line 11. This section proposes on page 42 to establish rates for hospital services for treatment of injured workers, and proposes on page 43 to freeze all charges by medical providers for a period of 2 years beginning January, 1988. Neither of these proposals are just or necessary.

Briefly stated, the reasons for deleting Section 25 of the Bill are as follows:

1. Present law (Section 39-71-309), in effect since 1973, provides that all hospitals must submit a schedule of charges annually to the Workers Compensation Division for treatment of injured workers to be in effect for a 12-month period and must not charge more for treatment of injured workers than is charged for treatment of private pay patients. This gives the Division a means of supervision of hospital charges which has worked well for 14 years. The Division has never complained about the operation of this statute without rate setting. A copy of Section 39-71-309 is attached for your ready reference.

2. Present law (Section 39-71-704(2), shown on page 42, lines 3 through 7 of the Bill), establishes a fee schedule for provider fees, but excludes hospital charges. This statute has been in effect since 1981. The Workers Compensation Division willingly agreed to exclude hospitals and has not indicated any problem with this arrangement over the past 6 years. It is readily recognized that providers who serve for a profit can absorb some loss by rate cutting, but nonprofit hospitals cannot.

3. Most Montana hospitals submit all rates for service to the Montana Hospital Rate Review System for determination of necessity. The System represents health insurers, government agencies, consumers and providers for the purpose of reviewing hospital rates to be certain that they are justified. The process is a very complicated and exacting process which takes a great deal of time and research. The approved charges serve as a standard for all Montana hospitals, large and small.

4. Montana hospitals are nonprofit corporations whose charges are set to meet costs and expenses of operation only. There are no shareholders or dividends. If charges are cut for any class of patients, charges must go up for others. This is commonly referred to as cost shifting. It is unfair and imposes a hardship on private pay patients who do not receive some kind of government assistance. Generally the extra cost is an amount over that paid by health care insurers and is an additional charge upon people who are trying to pay their own way. If the total hospital bill is covered by insurance, then the extra charge works to increase the premium required.

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5. Hospital costs cannot be reduced by shifting the load from one patient to another. In a nonprofit setting, costs can only be cut by reducing the service. Certainly no one expects Montana's injured workers to receive less than the best service available. In recent years, Montana Hospitals have cut personnel and other costs in every way practical and presently Montana rates 46th in the United States in terms of average hospital costs and average charges per patient stay. Further overall cuts would seriously affect the quality of care.

6. The first 7 lines on page 43 of the Bill, which would provide a freeze on provider charges for two years, should also be deleted. The argument against this provision is the same as stated above because it would place all inflationary costs of operation on the private pay patient during the two-year freeze. Hospitals are helpless to avoid inflationary costs. Costs of living increases to employees and increased cost of supplies are inevitable. They must be equitably applied to the patients receiving the service and the supplies.

Therefore, the Montana Hospital Association asks that you delete Section 25, which contains the above-mentioned provisions, and allow the present provisions to continue to operate. Hospital charges for injured workers cannot exceed charges for private pay patients and should not be less. Please do not pass a portion of the cost on to the private citizens who are sick and struggling to carry their own load.

Presented by

CHADWICK H. SMITH
REGISTERED LOBBYIST FOR THE
MONTANA HOSPITAL ASSOCIATION
442-2980

increased the assessment amount from \$25 to

\$75.1(1).

(2)

History:

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and may not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

Cross-References

"Division" defined, 39-71-116.

39-71-116

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MEETING MINUTES
WORKERS COMPENSATION SUBCOMMITTEE
MARCH 25, 1987

The meeting of the Workers' Compensation Subcommittee was called to order at 9:08 a.m. on March 25, 1987 in room 202a of the state capitol building by Chairman Bill Glaser.

All committee members were present.

SENATE BILL 315

EXECUTIVE ACTION

(7a:250) Betsy Griffing, staff attorney, Legislative Council, covered the proposed amendments list (exhibit 1) and described some of the major points. These points included the retroactive changes for mediation, proposed amendments numbers 58, 59, and 60, and clarification language in proposed amendment 18. Ms Griffing also addressed proposed amendments 35, 39, 6 and 11. She noted the rest of the proposed amendments were clerical and technical changes.

(7a:530) Ms Griffing then presented the history behind proposed amendment number 22. She stated the original bill stated 30 days, and in processing this was dropped and 10 days inserted. The proposed amendment would reinstate 30 days, as originally intended in the legislation.

In response to a question from Chairman Glaser, Ms Griffing stated the department was concerned about having sufficient time for mailing. Chairman Glaser expressed his concern that the division make every effort they can to make sure these people are taken care of as quickly as possible so that a situation isn't created where individuals think an attorney is needed to get prompt service from the division. He stated the division should recognize that the 30 day factor is the outside time limit, not the target number of days.

Ms Griffing stated that 20 days would be the minimum amount of time needed for processing.

(7a:632) Rep Driscoll stated the proposed amendment, number 11, was meaningless. He said "new hires" or "recently hired employees" should be inserted.

Rep Smith expressed his concern about having to fire an employee in order to rehire an injured worker. Rep Driscoll

stated that this was the intent, if the injured worker was able to return to work, a preference for that injured worker. He said that was the intent of the original study commission language. Rep Smith stated this was not his understanding of this issue, but that the injured worker would return to work if there was a vacant position available.

Bob Robinson, administrator of the Workers' Compensation Division (WCD), stated he recalled the WCAC discussion on this issue on whether the injured worker would bump people or have a preference over other new hires, and that the language was not precise; and that the new hire language was exactly what was in the advisory council recommendations; but he said it was his recollection and the understanding of the division and the department that it meant a preference over other new applicants, not a layoff of someone on the job in order to accommodate a former injured worker. Rep Smith concurred with this interpretation.

In response to a question from Rep Smith, Norm Grosfield, _____, stated his opinion was that the legislation's intent was that an injured worker, returning to work, would be able to "bump" an individual already hired. He stated he didn't believe that an individual could be given preference over someone already hired.

(7b:065) Ms Griffing then clarified the intent of proposed amendments 52, 53 and 54.

(7b:120) In response to an inquiry from Rep Smith, Norm Grosfield and Bob Robinson both agreed with the amendment, and that this language provided better clarification.

(7b:134) Ms Griffing stated proposed amendments numbers 60 and 61 came out of the legislative council over a concern for the intent for retroactive legislation and the need to express it in the legislation. Mr Robinson clarified that the retroactive provision applies only to accidents and the resolution of disputes and that it did not affect benefits by reducing or expanding them.

(7b:266) Rep Driscoll noted that the mediation process is mandated in the legislation for workers who have been injured prior to the passage of this bill; that the worker does not have an option.

(7b:309) Mr Grosfield commented on proposed amendment number 46, and stated he felt it expands and allows the insurer much greater discretion on deciding termination of benefits if the insurer believes that the claimant is not abiding by rehab. The insurer could unilaterally, on its

own, make that determination as opposed to the current system where it is the provider that decides that issue.

Ms Griffing presented a brief description of this part of the legislation and noted the inconsistencies of "rehabilitation services" on page 69 line 23, and "rehabilitation provider" on page 70 line 1. She noted the council was concerned with consistency between these two lines.

Mr Robinson referred to page 57 line 9 defining rehabilitation provider and line 14 defining rehabilitation services. He stated non cooperation with a rehabilitation provider means you are not cooperating with some insurance companies counselor. He said the intent was that the individual was not cooperating with the Rehabilitation program, i.e. an individual in school not going to classes. He said there should be some impetus in the legislation to force that individual to participate and progress with the program and service as defined on page 57 line 6. He stated this was an oversight and should have been picked up earlier. He said it was intended that the individual cooperate and progress with the services that were being provided. He stated if they do not progress and cooperate with the provider, that happens way before they have the rehabilitation panel.

Mr Grosfield stated it was his understanding that the greatest problem as raised by rehab people was that the injured workers would not cooperate with the person making the decision, the professional in the field that is making the decisions. That is why, he said, he thought this dealt with non cooperation of providers as opposed to a very general generic term regarding services. He said that that didn't mean that if someone isn't following what the provider says, the provider can't go and say they are not cooperating and following the directions they were given. He added by leaving provider in the legislation there is still sufficient protection to the insurer or the division and yet it doesn't give the insurance carrier unbridled authority to decide on its own whether a person is cooperating or not.

Mr Robinson stated the bottom line was that the committee needed to determine who was the provider. By the definition the provider is the rehab counselor employed by the insurer and what Mr Grosfield said was correct, it ought to be someone who is making the determination that the claimant is not cooperating or progressing, who is not the provider. The provider is out of the picture by the time the claimant is progressing, it is the service person who is dealing with the claimant at this point. If the claimant does not cooperate with the provider, SRS or the panel, there are no teeth.

Driscoll: It's his money, it comes off his 500 weeks.

Robinson: You can't get it off.

Driscoll: Its coming off his 500 weeks.

Robinson: So he stays on temporary total benefits for 500 weeks.

Driscoll: That is the intent - help the injured worker - give him 500 weeks -

Robinson: If he is progressing

(7b:450) Rep Driscoll stated the intent of the bill was to give the injured worker 500 weeks benefits and charge it off to his rehabilitation. He said now permanent partial benefits come off his 500 weeks, where it didn't under the old law, it was in addition to his permanent partial. Now the individual is taking his rehabilitation under his 500 weeks. Bob Robinson stated the program would be administered so that only half of the rehabilitation would be taken off the individual's 500 weeks.

Proposed Amendment Number 46

Rep Driscoll made a motion to change line 23 page 69, deleting "services" and inserting "provider".

A voice vote was taken and the motion PASSED unanimously.

Proposed Amendments Numbers 1, 3-10, 12-21, 23-45, 47-58

(7b:655) Rep Grinde made a motion to accept proposed amendments numbers 1, 3-10, 12-21, 23-58.

A voice vote was taken and the motion PASSED unanimously.

Proposed Amendments Numbers 2, 59, 60, and 61

Rep Driscoll made a motion to amend appropriate language in the bill stating that a worker "may use" the mediation process in retroactive cases.

A roll call vote was taken and the motion FAILED, with Rep Driscoll and Rep Nisbet voting yes, Rep Glaser, Rep Grinde, and Rep Smith voting no.

The committee noted that the following votes should be recorded for accepting proposed amendments numbers 2, 59, 60, and 61: Rep Driscoll and Rep Nisbet voting no, Rep Glaser, Rep Grinde, and Rep Smith voting yes.

Proposed Amendment Number 11

(8a:023) Rep Driscoll made a motion to not accept proposed amendment number 11.

(8a:074) Rep Nisbet made a substitute motion to amend page 34 by striking on line 14 "new hires", insert "other applicants"; line 15 strike (:); line 16 strike "(a)", line 17 strike (;) and, insert (.); strike lines 18 and 19 in their entirety; line 11 strike if, insert when; on line 15 after "vacant" strike within such 2 year period.

(8a:251) Ms Griffing read the amendment as proposed in Rep Nisbet's substitute motion: (2) When an injured worker is capable of returning to work within two (2) years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

A voice vote was taken and the motion PASSED unanimously.

Proposed Amendment Number 22

Rep Smith made a motion to to accept proposed amendment number 22, page 39, line 23, striking "10" and inserting "30".

A voice vote was taken and the motion PASSED, with Rep Driscoll voting no.

(8a:387) Rep Smith made a motion to reject three (3) proposed amendments submitted by Chiropractors, Hospital Association and from Plan Two (2).

There was general consensus and agreement to accept the motion.

Rep Driscoll made a motion to amend page 46 line 17, strike "500 weeks", insert "life".

A roll call vote was taken and the motion FAILED, with Rep Glaser, Rep Grinde, and Rep Smith voting no, Rep Driscoll and Rep Nisbet voting yes.

Rep Driscoll made a motion to amend page 55, strike lines 4 through 10; line 3 insert after advance: but may not charge interest.

A roll call vote was taken and the motion FAILED, with Rep Driscoll and Rep Nisbet voting yes, Rep Glaser, Rep Grinde, and Rep Smith voting no.

(8a:535) Rep Driscoll made a motion to amend HB 884 in its entirety into SB 315.

A voice vote was taken and the motion FAILED, with Rep Driscoll and Rep Nisbet voting yes, Rep Glaser, Rep Grinde, and Rep Smith voting no.

The meeting was adjourned at 10:52 a.m. (8a:604)

Bill Glaser, Chairman

bg/gmc/3.25 DRAFT

DAILY ROLL CALL

WORKERS COMPENSATION SUBCOMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 25, 1987

[illegible]

ROLL CALL VOTE

WORKERS COMPENSATION

SUBCOMMITTEE

DATE March 25, 1987 AGENCY SB 315 NUMBER 1

[illegible]

TALLY

2

3

~~Secretary~~

Chairman

Motion: Proposed Amendments Numbers 2, 59, 60 and 61

Rep Driscoll made a motion to amend appropriate language in the bill stating that a worker "may use" the mediation process in retroactive cases.

ROLL CALL VOTE

WORKERS COMPENSATION

SUBCOMMITTEE

DATE March 25, 1987 AGENCY SB 315 NUMBER 2

[illegible]

TALLY

2

3

Paul Carpenter
Secretary


Chairman

Motion: Rep Driscoll made a motion to amend page 46, line 17,
strike "500 weeks", insert "life".

Amendments to Senate Bill 315
Third reading copy (blue)
House Labor Subcommittee

1. Title, line 17.
Following: "39-71-122,"
Insert: "39-71-309,"

2. Title, line 20.
Following: "MCA;"
Insert: "MAKING CERTAIN PROVISIONS RETROACTIVE;"

3. Page 11, line 25.
Strike: "or"
Insert: ", "
Following: "lodging"
Insert: ", rent, or housing"

4. Page 12, line 1.
Strike: ", "
Insert: "and is"
Following: "on"
Strike: "the"
Insert: "its"
Strike: "of the" on line 1 through "housing" on line 2

5. Page 14, line 20.
Strike: "-- criminal penalty"

6. Page 15, line 7.
Following: "72"
Insert: ", other than the disputes described in subsection
(2), "

7. Page 16, lines 7 and 8.
Strike: "A" on line 7 through "A" on line 8
Insert: "Upon motion of a party, the"

8. Page 16, line 9.
Strike: "the"
Insert: "either"

9. Page 16, line 13.
Strike: "(6)"
Insert: "(d)"

10. Page 32, line 3.
Strike: "39-71-61"
Insert: "39-71-611"

11. Page 32, line 14.
Strike: " new hires"
Insert: "other applicants"

12. Page 32, line 18.

Following: "equally"

Insert: "as"

13. Page 33, line 4.

Strike: "injuries producing"

14. Page 35.

Following: line 16

Insert: "on"

15. Page 35, line 17.

Following: "more"

Strike: "that"

Insert: "than"

16. Page 36, line 4.

Strike: "injuries causing"

Insert: "permanent"

17. Page 36, line 5.

Following: "disability"

Insert: "-- impairment awards and wage supplements"

18. Page 36.

Following: line 15

Insert: "The benefits available for permanent partial disability are impairment awards and wage supplements."

19. Page 38, line 20.

Strike: "subsections"

Insert: "subsection"

Strike: "and (2)"

20. Page 39, line 14.

Following: "request of"

Strike: "he"

Insert: "the"

21. Page 39, line 15.

Following: "direct"

Strike: "a"

Insert: "the"

22. Page 39, line 23.

Strike: "10"

Insert: "30"

23. Page 40, line 25.

Strike: "a workers'"

Insert: "the"

24. Page 41, line 1.

Following: "subsection"

Strike: "(3)(b)(ii) or (3)(b)(iii)"
Insert: "(3)(b)(i) or (3)(b)(ii)"

25. Page 41, line 4.
Following: "subsection"
Strike: "(3)(b)(iii)"
Insert: "(3)(b)(ii)"

26. Page 41, line 14.
Following: "services"
Insert: "-- fee schedules and hospital rates"

27. Page 42, line 20.
Following: "January"
Insert: "1,"

28. Page 43, line 2.
Following: "January"
Insert: "1,"

29. Page 44, line 7.
Following: "total"
Insert: "disability"

30. Page 45, line 20.
Strike: "39-71-116"

31. Page 46, line 4.
Following: "and"
Strike: "39-71-116"

32. Page 46, line 8.
Following: "wage"
Insert: "at the time of injury"

33. Page 46, line 22.
Following: "through"
Strike: "39-71-116"

34. Page 49, line 2.
Strike: "and"
Insert: " , "

35. Page 49, line 3.
Following: "payments"
Insert: " , and lump-sum advance payments"

36. Page 52, line 16.
Following: "agree"
Insert: "to a settlement"

37. Page 53, line 16.
Strike: "worker's"
Insert: "workers'"

38. Page 53, line 19.

Strike: "RELEASES"

Insert: "RELEASE"

39. Page 54, lines 11, 15, and 16.

Following: "lump-sum" (the second "lump-sum" on line 11)

Insert: "advance"

40. Page 54, line 25.

Strike: "accident"

Insert: "injury"

41. Page 55, line 2.

Strike: "accident"

Insert: "injury"

42. Page 66, line 3.

Strike: "services"

Insert: "appeals"

43. Page 67, line 15.

Strike: "nd"

Insert: "and"

44. Page 68, line 13.

Following: "a"

Insert: "total of"

Following: "\$4,000"

Strike: "total"

45. Page 69, line 11.

Strike: "and"

Insert: "but"

46. Page 70, line 1.

Strike: "provider"

Insert: "services"

47. Page 70.

Following: line 24

Insert: "rehabilitation"

Strike: "under this part"

48. Page 72, line 8.

Following: "security"

Insert: ", in addition to the security described in subsection (1)"

49. Page 72, line 13.

Following: "security"

Insert: "provided for in subsection (2)"

50. Page 80, line 24.

Strike: "-- limitation"

51. Page 82, line 2.

Following: "or"

Insert: "by"

52. Page 83, line 16.

Strike: "as defined in"

Insert: ", damage, or death as set forth in"

53. Page 83, line 17.

Strike: "but which"

Insert: "and"

54. Page 83, line 18.

Strike: "is"

55. Page 84, line 5.

Strike: "(SiO SB2"

Insert: "(SiO)"

56. Page 86, line 9.

Strike: "and"

Insert: "or"

57. Page 91, line 19.

Following: "39-71-122,"

Insert: "39-71-309,"

58. Page 92.

Following: line 7.

Insert: "(2) Sections 8, and 52 through 57 are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to sections 8, and 52 through 57."

Renumber: subsequent subsections

59. Page 93, lines 9 and 11.

Strike: "The" on line 9 through "disputes" on line 11

Insert: "Sections 8, and 52 through 57"

Following: "apply"

Insert: "retroactively, within the meaning of 1-2-109,"

60. Page 63, line 12.

Following: "occurrence."

Insert: "With respect to rehabilitation disputes, sections 8, and 52 through 57 apply retroactively, within the meaning of 1-2-109, unless the division had jurisdiction over the dispute under the law in effect at the time of injury."

61. Page 63, lines 13 though 20.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 26, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 26, 1987 at 9:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE ACTION

ACTION ON HOUSE BILL 461

Rep. Dennis Nathe requested that House Bill No. 461 BE TABLED. The motion carried with three opposed.

ACTION ON SENATE BILL 353

Rep. Thomas moved SB 353 BE CONCURRED IN. Rep. Thomas moved to adopt the committee report and amendments. Chairman Kitselman discussed the amendments and mentioned that the Montana Psychological Association wanted to make sure that the board consisted of multi-disciplinary fields. He said the State Auditors language was accepted as amendment to the bill.

Rep. Brown commented that all the people had agreed to the amendments. The question was called. The motion carried with Reps. Jones and Brandewie opposed.

The question was called on the motion to be concurred as amended. The motion carried with Reps. Brandewie and Jones opposed.

ACTION ON SENATE BILL 371

Chairman Kitselman pointed out that one amendment on page 5 to page 6 that was not agreed on by the committee. Exhibit No. 1.

He said that was suggested by Steve Waldron but is the crux of what a preferred provider is. He said to compare the two programs, the health maintenance organization is a group of people that prepay and are assigned to a certain member health service group. The preferred provider organization are given a 25 percent differential in their medical charges and is selective on who belongs. He said the bill says a health care insurer may not deny a provider who agrees to the terms. He questioned whether the provider denied that

person would they be open to tort litigation on a discriminatory basis. He said the whole preferred provider agreement is based on discriminatory practices. He recommended that the language remain out of the bill. He said the bill is important to regulate the organization and provide consumer protection.

Rep. Swysgood questioned where one would take complaints. Chairman Kitselman explained it that a person would have to go to the preferred provider group to have the 25 percent differential. He pointed out that the discount encouraged employees to use their own facility. He said there were 93,000 contracts with Blue Cross Blue Shield. He said this still allows them to exist and provides consumer protection and regulation. He explained the pool core of doctors that deliver services under the preferred providers pay a lower fee. The question was called on adopting the committee report and amendments. The motion carried unanimously.

Rep. Thomas moved BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON SENATE BILL 315

Rep. Glaser, chairman of the subcommittee on SB 315, discussed the bill as a tool to protect workers and employers. He mentioned amendments proposed by the workers comp subcommittee. Rep. Glaser moved BE CONCURRED IN. Rep. Glaser moved the amendments.

He discussed amendments 12, 13, 14 and 15, on page 32 of the bill. Exhibit No. 2. He said there was a flaw in the bill. When someone is being rehabilitated and come back to where they can work the amendment says if there is a job opening and you are qualified the employer has an obligation to bring that person back. The person comes back as a new employee. He discussed amendment 49 that allows for termination of benefits for non-cooperation for rehabilitation services. He pointed out a concern by Rep. Driscoll. Rep. Driscoll commented on the rehabilitation disputes and how they are handled with portions being retroactive for administrative purposes.

Rep. Thomas moved the adoption of the subcommittee report and amendments. The question was called. The motion carried.

Rep. Glaser pointed out another amendment that needs to be considered on page 69 and 70. He said that after "provider" to insert "or the Department of Social and Rehabilitation Services". He pointed out that it was necessary to say Department of Social and Rehabilitation Services because it

was not defined in this act. Rep. Glaser moved the amendment.

Rep. Hanson asked if SRS had to review the case or why was SRS involved. Rep. Driscoll said that the intent was to make it clear that private providers and SRS could remove the case. Rep. Glaser said the division make the determination whether the person receiving the benefits is cooperating with the provider or SRS. He noted line 6, page 70. The question on the amendment was called. The motion carried with Reps. Swysgood and Hanson voting NO.

Rep. Driscoll stated that he disagreed with Rep. Glaser, that the bill was not a compromise, and passed the Senate on pure political power and that was how it would pass the House. He said the bill is cutting widows off if their spouse is killed. Presently the benefits are for life. The bill cuts them down to 500 weeks. On permanently totally disabled workers if they want a lump sum settlement to pay off past bill incurred because of the injury they would get an interest bearing loan. On partially disabled people, a wage supplement plan. The rehabilitative benefits come off the 500 weeks. Each degree of injury is given five weeks. The insurance industry said there is 40 percent savings in the bill for private and 25 percent estimated by the division. All the money spent in the state for Workers Comp, benefits are being cut \$25 million dollars or more and no one else in the system is taking a cut. He said the bill would be amended for many years to come and by itself it does not solve the problem.

Rep. Thomas asked Rep. Glaser for an opinion on future management of the department. Rep. Glaser noted that because of the subcommittee, there had been 11 auditors in the department for a month, stacks of data on what was going right or wrong. Recommendations have been made to the department that they are implementing. He pointed the difficulty of running a business with politicians.

Rep. Hanson asked Rep. Driscoll about the 500 weeks whether it was retroactive or begin from the time the bill becomes effective. Rep. Smith said the bill would not go into effect until July 1. Rep. Glaser pointed out that an old contract could not be broke. He said a child is covered until they reach maturity.

The question was called on SB 315 being concurred in as amended. The motion carried with Reps. Pavlovich, Driscoll, Hanson, Nisbet voting NO.

ACTION ON SENATE BILL 385

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date

3-26-87

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

March 26

DATE 3-26-87
HB SB 315
19 87

BUSINESS AND LABOR

Mr. Speaker: We, the committee on

report

SENATE BILL NO. 315

☐ do pass ☒ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. LES KITSELMAN

Chairman

1. Title, page 2, line 17.

Following: "39-71-122,"

Insert: "39-71-309,"

2. Title, page 2, line 20.

Following: "MCA,"

Insert: "MAKING CERTAIN PROVISIONS RETROACTIVE,"

3. Page 11, line 25.

Strike: "or"

Insert: ", "

Following: "lodging"

Insert: ", rent, or housing"

4. Page 12, line 1.

Strike: ", "

Insert: "and is"

Following: "on"

Strike: "the"

Insert: "its"

Strike: "of the" on line 1 through "housing" on line 2

5. Page 14, line 20.

Strike: "-- criminal penalty"

6. Page 15, line 7.

Following: "72"

Insert: ", other than the disputes described in subsection
(2),"

7. Page 16, lines 7 and 8.

Strike: "A" on line 7 through "A" on line 8

Insert: "Upon motion of a party, the"

Rep. Glaser will sponsor

THIRD reading copy (BLUE color)

8. Page 16, line 9.

Strike: "the"

Insert: "either"

9. Page 16, line 13.

Strike: "(6)"

Insert: "(d)"

10. Page 32, line 3.

Strike: "39-71-61"

Insert: "39-71-611"

11. Page 32, line 11.

Strike: "If"

Insert: "When"

12. Page 32, line 14.

Strike: "new hires"

Insert: "other applicants"

13. Page 32, line 15.

Strike: "within such 2-year period"

Strike: ":",

14. Page 32, line 16.

Strike: "(a)"

15. Page 32, lines 17 through 19.

Strike: "; and" on line 17 through "applicants" on line 19

16. Page 33, line 4.

Strike: "injuries producing"

17. Page 35, line 17.

Following: line 16

Insert: "on"

18. Page 35, line 17.

Following: "more"

Strike: "that"

Insert: "than"

19. Page 36, line 4.

Strike: "injuries causing"

Insert: "permanent"

20. Page 36, line 5.

Following: "disability"

Insert: "-- impairment awards and wage supplements"

MS

21. Page 36, line 16.

Following: line 15

Insert: "The benefits available for permanent partial disability are impairment awards and wage supplements."

22. Page 38, line 20.

Strike: "subsections"

Insert: "subsection"

Strike: "and (2)"

23. Page 39, line 14.

Following: "of"

Strike: "he"

Insert: "the"

24. Page 39, line 15.

Following: "direct"

Strike: "a"

Insert: "the"

25. Page 39, line 23.

Strike: "10"

Insert: "30"

26. Page 40, line 25.

Strike: "a workers'"

Insert: "the"

27. Page 41, line 1.

Following: "subsection"

Insert: "(3)(b)(i) or"

Following: "(3)(b)(ii)"

Strike: "or (3)(b)(iii)"

28. Page 41, line 4.

Following: "subsection"

Strike: "(3)(b)(iii)"

Insert: "(3)(b)(ii)"

29. Page 41, line 14.

Following: "services"

Insert: "-- fee schedules and hospital rates"

30. Page 42, line 20.

Following: "January"

Insert: "1,"

MS

31. Page 43, line 2.
Following: "January"
Insert: "1,"

32. Page 44, line 7.
Following: "total"
Insert: "disability"

33. Page 45, line 20.
Strike: "39-71-116"

34. Page 46, line 4.
Following: "and"
Strike: "39-71-116"

35. Page 46, line 9.
Following: "wage"
Insert: "at the time of injury"

36. Page 46, line 22.
Following: "through"
Strike: "39-71-116"

37. Page 49, line 2.
Strike: "and"
Insert: " , "

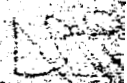
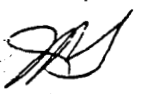
38. Page 49, line 3.
Following: "payments"
Insert: " , and lump-sum advance payments "

39. Page 52, line 16.
Following: "agree"
Insert: "to a settlement"

40. Page 53, line 16.
Strike: "worker's"
Insert: "workers"

41. Page 53, line 19.
Strike: "RELEASES"
Insert: "RELEASE"

42. Page 54, line 11.
Following: "all lump-sum"
Insert: "advance"



43. Page 54, line 15.

Following: "lump-sum"

Insert: "advance"

44. Page 54, line 16.

Following: "lump-sum"

Insert: "advance"

45. Page 54, line 25.

Strike: "accident"

Insert: "injury"

46. Page 55, line 2.

Strike: "accident"

Insert: "injury"

47. Page 66, line 3.

Strike: "services"

Insert: "appeals"

48. Page 67, line 15.

Strike: "nd"

Insert: "and"

49. Page 68, line 13.

Following: "a"

Insert: "total of"

Following: "\$4,000"

Strike: "total"

50. Page 69, line 11.

Strike: "and"

Insert: "but"

51. Page 69, line 23.

Strike: "services"

Insert: "provider or the department of social and
rehabilitation services"

52. Page 70, line 1.

Following: "provider"

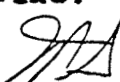
Insert: "the department of social and rehabilitation
services"

53. Page 70, line 25.

Following: line 24

Insert: "rehabilitation"

Strike: "under this part"



54. Page 72, line 8.

Following: "security"

Insert: "in addition to the security described in subsection (1)"

55. Page 72, line 13.

Following: "security"

Insert: "provided for in subsection (2)"

56. Page 80, line 24.

Strike: "-- limitation"

57. Page 82, line 2.

Following: "or"

Insert: "by"

58. Page 83, line 16.

Strike: "as defined in"

Insert: ", damage, or death as set forth in"

59. Page 83, line 17.

Strike: "but which"

Insert: "and"

60. Page 83, line 18.

Strike: "is"

61. Page 84, line 5.

Strike: "(S10 SB2"

Insert: "(S10₂)"

62. Page 86, line 9.

Strike: "and"

Insert: "or"

63. Page 91, line 19.

Following: "39-71-122,"

Insert: "39-71-309,"

64. Page 92, line 8.

Following: line 7

Insert: "(2) Sections 8 and 52 through 57 are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to sections 8 and 52 through 57."

Renumber: subsequent subsections



65. Page 93, lines 9 through 11.

Strike: "The" on line 9 through "disputes" on line 11

Insert: "Sections 8 and 52 through 57"

Following: "apply"

Insert: "retroactively, within the meaning of 1-2-109,"

66. Page 93, line 12.

Following: "occurrence."

Insert: "With respect to rehabilitation disputes, sections 8, and 52 through 57 apply retroactively, within the meaning of 1-2-109, unless the division had jurisdiction over the dispute under the law in effect at the time of injury."

67. Page 93, lines 13 through 20.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

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1 STATEMENT OF INTENT

2 SENATE BILL 315

3 Senate Labor and Employment Relations Committee
45 A statement of intent is required for this bill because
6 of the following:7 The division of workers' compensation needs to adopt
8 rules to efficiently and fairly implement the Workers'
9 Compensation Act. There are numerous references throughout
10 the act to rules, rates, procedures, and forms to be
11 prescribed by the division (e.g., 39-71-208, 39-71-307,
12 39-71-410, 39-71-604, 39-71-2102, 39-71-2303, and
13 39-71-2304). However, there is no explicit statutory grant
14 of rulemaking authority in the chapter.15 The Montana supreme court, in Garland v. The Anaconda
16 Company, 177 Mont. 240, 581 P.2d 431 (1978), tacitly
17 recognized 39-71-203 as a general grant of rulemaking
18 authority. To preserve the division's rulemaking authority
19 and extend it to the amendments promulgated in this bill,
20 the legislature explicitly grants and extends rulemaking
21 authority to the division to implement the Workers'
22 Compensation Act.23 The division may adopt rules as necessary to implement
24 the act. The division shall provide the rules, procedures,
25 and forms specifically referred to in sections of the act1 and implement other sections as necessary and appropriate by
2 providing specific guidelines, policies, and procedures to
3 serve the efficient and fair administration of the act.

SENATE BILL NO. 315

INTRODUCED BY B. WILLIAMS, THAYER, C. SMITH, DARKO, CODY,
 BARDANOUVE, DONALDSON, HIRSCH, M. WILLIAMS, KOLSTAD,
 PISTORIA, FARRELL, MERCER, THOMAS, WEEDING, STANG, HARPER,
 RASMUSSEN, BRANDEWIE, GALT, LYBECK, NATHE, SPAETH, NORMAN,
 J. BROWN, NEUMAN, KITSELMAN, BENGTSON, PECK, GILBERT,
 KEATING, HARRINGTON, ABRAMS, GLASER, HAMMOND, VAUGHN,
 BECK, JENKINS, GRADY, MARKS, MANUEL, HIMSL, SCHYE,
 CORNE', PETERSON, WALLIN, GRINDE, SIMON,

JONES, CONNELLY, HOLLIDAY, ECK

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 WORKERS' COMPENSATION LAWS, TO CREATE A BOARD OF INDUSTRIAL
 INSURANCE, TO ABOLISH THE WORKERS' COMPENSATION COURT AND
 THE BOARD OF LABOR APPEALS, AMENDING SECTIONS 2-15-1014,
 19-12-401, 39-51-201, 39-51-1304, 39-51-2402, 39-51-2405
 THROUGH 39-51-2407, 39-71-116, 39-71-110, 39-71-119,
 39-71-203, 39-71-204, 39-71-401, 39-71-407, 39-71-414,
 39-71-502, 39-71-503, 39-71-605, 39-71-611 THROUGH
 39-71-614, 39-71-701 THROUGH 39-71-704, 39-71-708,
 39-71-710, 39-71-721, 39-71-736, 39-71-737, 39-71-741,
 39-71-803, 39-71-1003, 39-71-2106, 39-71-2901, 39-71-2903,
 39-71-2905, 39-71-2907, 39-71-2909, 39-72-102, AND 45-6-301,
 MCA; REPEALING SECTIONS 39-71-104, 39-71-121, 39-71-122,
 39-71-309, 39-71-410, 39-71-705 THROUGH 39-71-707,
 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002,
 39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104, MCA;
 MAKING CERTAIN PROVISIONS RETROACTIVE; AND PROVIDING
 APPLICABILITY DATES AND EFFECTIVE DATES."

2-15-1014, 2-15-1704, 39-51-305, 39-51-310, 39-51-2403,
 39-51-2404, 39-51-2409, 39-51-2410, 39-71-104, 39-71-121,
 39-71-122, 39-71-309, 39-71-410, 39-71-705 THROUGH
 39-71-707, 39-71-709, 39-71-738, 39-71-914, 39-71-1001,
 39-71-1002, 39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104,
 MCA; REPEALING SECTIONS 39-71-104, 39-71-121, 39-71-122,
 39-71-309, 39-71-410, 39-71-705 THROUGH 39-71-707,
 39-71-709, 39-71-738, 39-71-914, 39-71-1001, 39-71-1002,
 39-71-1005, 39-71-2906, 39-71-2908, AND 39-72-104, MCA;
 MAKING CERTAIN PROVISIONS RETROACTIVE; AND PROVIDING
 APPLICABILITY DATES AND EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Declaration of public policy.

For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide

coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

Section 2. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife-or-husband spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. ~~Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.~~

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury, ~~and an illegitimate child legitimized prior to the injury.~~

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and

industry.

(5)(7) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6)(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7)--"Husband"--or--"widower"--means--only--a--husband--or--widower--living--with--or--legally--entitled--to--be--supported--by--the--deceased--at--the--time--of--her--injury.

(8)(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the ~~industrial~~ insurance account state compensation insurance fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9)(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(10)(12) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11)(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual

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1 payroll of the employer for the preceding calendar year or,
 2 if the employer shall not have operated a sufficient or any
 3 length of time during such calendar year, 12 times the
 4 average monthly payroll for the current year; provided, that
 5 an estimate may be made by the division for any employer
 6 starting in business where no average payrolls are
 7 available, such estimate to be adjusted by additional
 8 payment by the employer or refund by the division, as the
 9 case may actually be on December 31 of such current year.

10 ~~{12}~~(14) "Permanent partial disability" means a
 11 condition ~~resulting from injury as defined in this chapter~~
 12 ~~that results in the actual loss of earnings or earning~~
 13 ~~capability less than total that exists after the injured~~
 14 ~~worker is as far restored as the permanent character of the~~
 15 ~~injuries will permit. Disability shall be supported by a~~
 16 ~~preponderance of medical evidence, after a worker has~~
 17 ~~reached maximum healing, in which a worker:~~

16 (a) has a medically determined physical restriction as
 19 a result of an injury as defined in 39-71-119; and

20 (b) is able to return to work in the worker's job pool
 21 pursuant to one of the options set forth in [section 36] but
 22 suffers impairment or partial wage loss, or both.

23 ~~{13}~~(15) "Permanent total disability" means a condition
 24 resulting from injury as defined in this chapter that
 25 results in the loss of actual earnings or earning capability

1 that exists after the injured worker is as far restored as
 2 the permanent character of the injuries will permit and
 3 which results in the worker having no reasonable prospect of
 4 finding regular employment of any kind in the normal labor
 5 market. Disability shall be supported by a preponderance of
 6 medical evidence, after a worker reaches maximum healing,
 7 in which a worker is unable to return to work in the
 8 worker's job pool after exhausting all options set forth in
 9 [section 36].

10 ~~{14}~~(16) The term "physician" includes "surgeon" and in
 11 either case means one authorized by law to practice his
 12 profession in this state.

13 ~~{15}~~(17) "The plant of the employer" includes the place
 14 of business of a third person while the employer has access
 15 to or control over such place of business for the purpose of
 16 carrying on his usual trade, business, or occupation.

17 ~~{16}~~(18) "Public corporation" means the state or any
 18 county, municipal corporation, school district, city, city
 19 under commission form of government or special charter,
 20 town, or village.

21 ~~{17}~~(19) "Reasonably safe place to work" means that the
 22 place of employment has been made as free from danger to the
 23 life or safety of the employee as the nature of the
 24 employment will reasonably permit.

25 ~~{18}~~(20) "Reasonably safe tools and appliances" are

such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19)(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. A worker shall be paid temporary total disability benefits during a reasonable period of retraining. Disability shall be supported by a preponderance of medical evidence reaches maximum healing.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year."

Section 3. Section 39-71-119, MCA, is amended to read:

"39-71-119. Injury or injured and accident defined.

(1) "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection (2) of this section;

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village, or fire district as a regular member of a lawfully established fire department, which diseases are caused by overexertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of 4 years or more to heat, smoke, chemical fumes, or other toxic gases. Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary, or respiratory disease while in the course and scope of his employment.

(a) internal or external physical harm to the body;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(3)(c) death resulting from injury.

(2) An injury is caused by an accident. An accident is:

1 (a) an unexpected traumatic incident or unusual
2 strain;

3 (b) identifiable by time and place of occurrence;

4 (c) identifiable by member or part of the body
5 affected; and

6 (d) caused by a specific event on a single day or
7 during a single work shift.

8 (3) "Injury" or "injured" does not mean a physical or
9 mental condition arising from:

10 (a) emotional or mental stress; or

11 (b) a nonphysical stimulus or activity.

12 (4) "Injury" or "injured" does not include a disease
13 that is not caused by an accident.

14 (5) A cardiovascular, pulmonary, respiratory, or other
15 disease, cerebrovascular accident, or myocardial infarction
16 suffered by a worker is an injury only if the accident is
17 the primary cause of the physical harm in relation to other
18 factors contributing to the physical harm."

19 NEW SECTION. Section 4. Wages defined. (1) "Wages"
20 means the gross remuneration paid in money, or in a
21 substitute for money, for services rendered by an employee.
22 Wages include but are not limited to:

23 (a) commissions, bonuses, and remuneration at the
24 regular hourly rate for overtime work, holidays, vacations,
25 and sickness periods;

1 (b) board or, lodging, RENT, OR HOUSING if it
2 constitutes a part of the employee's remuneration; AND IS
3 based on the ITS actual value of-the-board,-lodging,-rent,
4 or-housing; and

5 (c) payments made to an employee on any basis other
6 than time worked, including but not limited to piecework, an
7 incentive plan, or profit-sharing arrangement.

8 (2) Wages do not include:

9 (a) employee travel expense reimbursements or
10 allowances for meals, lodging, travel, and subsistence;

11 (b) special rewards for individual invention or
12 discovery;

13 (c) tips and other gratuities received by the employee
14 in excess of those documented to the employer for tax
15 purposes;

16 (d) contributions made by the employer to a group
17 insurance or pension plan; or

18 (e) vacation or sick leave benefits accrued but not
19 paid.

20 (3) For compensation benefit purposes, the average
21 actual earnings for the four pay periods immediately
22 preceding the injury are the employee's wages, except if:

23 (a) the term of employment for the same employer is
24 less than four pay periods, in which case the employee's
25 wages are the hourly rate times the number of hours in a

1 week for which the employee was hired to work; or

2 (b) for good cause shown by the claimant, the use of
3 the four pay periods does not accurately reflect the
4 claimant's employment history with the employer, in which
5 case the insurer may use additional pay periods.

6 Section 5. Section 39-71-203, MCA, is amended to read:

7 "39-71-203. Powers of division -- rules. (1) The
8 division is hereby vested with full power, authority, and
9 jurisdiction to do and perform any and all things, whether
10 herein specifically designated or in addition thereto, which
11 that are necessary or convenient in the exercise of any
12 power, authority, or jurisdiction conferred upon it under
13 this chapter.

14 (2) The division may adopt rules to carry out the
15 provisions of this chapter."

16 Section 6. Section 39-71-204, MCA, is amended to read:

17 "39-71-204. Rescission, alteration, or amendment by
18 division of its orders, decisions, or awards ---limitation
19 -- effect -- appeal. (1) Except-as--provided--in--subsection
20 (2)--the The division shall have has continuing jurisdiction
21 over all its orders, decisions, and awards and may, at any
22 time, upon notice, and after opportunity to be heard is
23 given to the parties in interest, rescind, alter, or amend
24 any such order, decision, or award made by it upon good
25 cause appearing therefor.

1 (2)--The--division--or--the-workers--compensation-judge
2 shall-not-have-power-to-rescind,--alter,--or-amend--any--final
3 settlement--or-award-of-compensation-more-than-4-years-after
4 the-same-has-been--approved--by--the--division.---Rescinding,
5 altering,--or--amending-a-final-settlement-within-the-4-year
6 period-shall-be-by-agreement-between-the--claimant--and--the
7 insurer.---If--the-claimant-and-the-insurer-cannot-agree,--the
8 dispute-shall-be-considered-a-dispute-for-which-the-workers--
9 compensation-judge-has-jurisdiction-to-make-a-determination.
10 Except-as--provided--in--39-71-2988,--the--division--or--the
11 workers--compensation--judge--shall--not--have-the-power-to
12 rescind,--alter,--or-amend-any--order--approving--a--full--and
13 final-compromise-settlement-of-compensation.

14 (3)(2) Any order, decision, or award rescinding,
15 altering, or amending a prior order, decision, or award
16 shall-have has the same effect as original orders or awards.

17 (3) If a party is aggrieved by a division order, the
18 party may appeal the dispute to the workers' compensation
19 judge."

20 NEW SECTION. Section 7. Filing true claim --
21 obtaining benefits through deception or other fraudulent
22 means ---criminal-penalty. (1) A person filing a claim under
23 this chapter or chapter 72 of this title, by signing the
24 claim, affirms the information filed is true and correct to
25 the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

NEW SECTION. Section 8. Disputes -- jurisdiction -- evidence -- settlement requirements -- mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, OTHER THAN THE DISPUTES DESCRIBED IN SUBSECTION (2), must be brought before a department mediator as provided in [sections 52 through 57]. If a dispute still exists after the parties satisfy the mediation requirements in [sections 52 through 57], either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the division jurisdiction must be brought before the division.

(3) An appeal from a division order may be made to the workers' compensation court.

(4) The common law and statutory rules of evidence do not apply in a case brought to hearing before the division.

(5) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as

follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) ~~A--party--may--move--to--dismiss--a--petition--if--it--does--not--comply--with--this--subsection--A~~ UPON MOTION OF A PARTY, ~~THE~~ mediator has the authority to dismiss a petition if he finds that the EITHER party did not comply with this subsection, but the mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

~~{6}~~ (D) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter.

NEW SECTION. Section 9. Financial incentives to institute safety programs. The state compensation insurance fund, plan No. 3, and private insurers, plan No. 2, may provide financial incentives to an employer who implements a formal safety program. The insurance carrier may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

Section 10. Section 39-71-401, MCA, is amended to

1 read:

2 "39-71-401. Employments covered and employments
3 exempted. (1) Except as provided in subsection (2) of this
4 section, the Workers' Compensation Act applies to all
5 employers as defined in 39-71-117 and to all employees as
6 defined in 39-71-118. An employer who has any employee in
7 service under any appointment or contract of hire, expressed
8 or implied, oral or written, shall elect to be bound by the
9 provisions of compensation plan No. 1, 2, or 3. Every
10 employee whose employer is bound by the Workers'
11 Compensation Act is subject to and bound by the compensation
12 plan that has been elected by the employer.

13 (2) Unless the employer elects coverage for these
14 employments under this chapter and an insurer allows such an
15 election, the Workers' Compensation Act does not apply to
16 any of the following employments:

17 (a) household and domestic employment;

18 (b) casual employment as defined in 39-71-116{3}
19 ~~except employment of a volunteer under 67-2-105;~~

20 (c) employment of members of an employer's family
21 dwelling in the employer's household;

22 (d) employment of sole proprietors or working members
23 of a partnership ~~other than those who consider themselves or~~
24 ~~hold themselves out as independent contractors and who are~~
25 ~~not contracting for agricultural services to be performed on~~

1 ~~a--farm--or--ranch;--or--for--broker--or--salesman--services~~
2 ~~performed--under--a--license--issued--by--the--board--of--realty~~
3 ~~regulation;--or--for--services--as--a--direct--seller--engaged--in~~
4 ~~the--sale--of--consumer--products--to--customers--primarily--in--the~~
5 ~~home, except as provided in subsection (3);~~

6 (e) employment of a broker or salesman performing
7 under a license issued by the board of realty regulation;

8 (f) employment of a direct seller engaged in the sale
9 of consumer products, primarily in the customer's home;

10 ~~(f)(g)~~ (g) employment for which a rule of liability for
11 injury, occupational disease, or death is provided under the
12 laws of the United States;

13 ~~(f)(h)~~ (h) employment of any person performing services in
14 return for aid or sustenance only, except employment of a
15 volunteer under 67-2-105;

16 ~~(g)(i)~~ (i) employment with any railroad engaged in
17 interstate commerce, except that railroad construction work
18 ~~shall be~~ is included in and subject to the provisions of
19 this chapter;

20 ~~(h)(j)~~ (j) employment as an official, including a timer,
21 referee, or judge, at a school amateur athletic event,
22 unless the person is otherwise employed by a school
23 district.

24 (3) A sole proprietor, or a working member of a
25 partnership who holds himself out or considers himself an

independent contractor, and--who--is--not--contracting--for
 agricultural-services-to-be-performed-on-a-farm-or-ranch, or
 for--broker--or--salesman-services-performed-under-a-license
 issued-by-the-board-of-realty-regulation, or-for-services-as
 a-direct-seller-engaged-in-the-sale-of-consumer-products--to
 customers--primarily--in--the--home must elect to be bound
 personally and individually by the provisions of
 compensation plan No. 1, 2, or 3, but he may apply to the
 division for an exemption from the Workers' Compensation Act
 for himself. The application must be made in accordance with
 the rules adopted by the division. The division may deny the
 application only if it determines that the applicant is not
 an independent contractor. When an application is approved
 by the division, it is conclusive as to the status of an
 independent contractor and precludes the applicant from
 obtaining benefits under this chapter.

(4) (a) A private corporation shall provide coverage
 for its officers and other employees under the provisions of
 compensation plan No. 1, 2, or 3. However, pursuant to such
 rules as the division promulgates and subject in all cases
 to approval by the division, an officer of a private
 corporation may elect not to be bound as an employee under
 this chapter by giving a written notice, on a form provided
 by the division, served in the following manner:

(i) if the employer has elected to be bound by the

provisions of compensation plan No. 1, by delivering the
 notice to the board of directors of the employer and the
 division; or

(ii) if the employer has elected to be bound by the
 provisions of compensation plan No. 2 or 3, by delivering
 the notice to the board of directors of the employer, the
 division, and the insurer.

(b) If the employer changes plans or insurers, the
 officer's previous election is not effective and the officer
 shall again serve notice as provided if he elects not to be
 bound.

(c) The appointment or election of an employee as an
 officer of a corporation for the purpose of excluding the
 employee from coverage under this chapter does not entitle
 the officer to elect not to be bound as an employee under
 this chapter. In any case, the officer must sign the notice
 required by subsection (4)(a) under oath or affirmation, and
 he is subject to the penalties for false swearing under
 45-7-202 if he falsifies the notice.

(4)(5) Each employer shall post a sign in the
 workplace at the locations where notices to employees are
 normally posted, informing employees about the employer's
 current provision of compensation insurance. A workplace is
 any location where an employee performs any work-related act
 in the course of employment, regardless of whether the

location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

Section 11. Section 39-71-407, MCA, is amended to read:

"39-71-407. Liability of insurers -- limitations. (1) Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that such claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part, or condition, of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole and exclusive cause of the injury or death. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply."

Section 12. Section 39-71-414, MCA, is amended to read:

"39-71-414. Subrogation. (1) If an action is

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1 prosecuted as provided for in 39-71-412 or 39-71-413 and
 2 except as otherwise provided in this section, the insurer is
 3 entitled to subrogation for all compensation and benefits
 4 paid or to be paid under the Workers' Compensation Act. The
 5 insurer's right of subrogation is a first lien on the claim,
 6 judgment, or recovery.

7 (2) (a) If the injured employee intends to institute
 8 the third party action, he shall give the insurer reasonable
 9 notice of his intention to institute the action.

10 (b) The injured employee may request that the insurer
 11 pay a proportionate share of the reasonable cost of the
 12 action, including attorneys' fees.

13 (c) The insurer may elect not to participate in the
 14 cost of the action. If this election is made, the insurer
 15 waives 50% of its subrogation rights granted by this
 16 section.

17 (d) If the injured employee or the employee's personal
 18 representative institutes the action, the employee is
 19 entitled to at least one-third of the amount recovered by
 20 judgment or settlement less a proportionate share of
 21 reasonable costs, including attorneys' fees, if the amount
 22 of recovery is insufficient to provide the employee with
 23 that amount after payment of subrogation.

24 (3) If an injured employee refuses or fails to
 25 institute the third party action within 1 year from the date

1 of injury, the insurer may institute the action in the name
 2 of the employee and for the employee's benefit or that of
 3 the employee's personal representative. If the insurer
 4 institutes the action, it shall pay to the employee any
 5 amount received by judgment or settlement which is in excess
 6 of the amounts paid or to be paid under the Workers'
 7 Compensation Act after the insurer's reasonable costs,
 8 including attorneys' fees for prosecuting the action, have
 9 been deducted from the recovery.

10 (4) An insurer may enter into compromise agreements in
 11 settlement of subrogation rights.

12 (5) If the amount of compensation and other benefits
 13 payable under the Workers' Compensation Act have not been
 14 fully determined at the time the employee, the employee's
 15 heirs or personal representatives, or the insurer have
 16 settled in any manner the action as provided for in this
 17 section, the division shall determine what proportion of the
 18 settlement shall be allocated under subrogation. The
 19 division's determination may be appealed to the workers'
 20 compensation judge.

21 (6) (a) The insurer is entitled to full subrogation
 22 rights under this section, even though the claimant is able
 23 to demonstrate damages in excess of the workers'
 24 compensation benefits and the third-party recovery combined.
 25 The insurer may subrogate against the entire settlement or

1 award of a third party claim brought by the claimant or his
 2 personal representative, without regard to the nature of the
 3 damages.

4 (b) If no survival action exists and the parties reach
 5 a settlement of a wrongful death claim without apportionment
 6 of damages by a court or jury, the insurer may subrogate
 7 against the entire settlement amount, without regard to the
 8 parties' apportionment of the damages, unless the insurer is
 9 a party to the settlement agreement."

10 Section 13. Section 39-71-502, MCA, is amended to
 11 read:

12 "39-71-502. Creation and purpose of uninsured
 13 employers' fund. There is created an uninsured employers'
 14 fund. The purpose of the fund is to pay to an injured
 15 employee of an uninsured employer the same benefits the
 16 employee would have received if the employer had been
 17 properly enrolled under compensation plan No. 1, 2, or 3,
 18 except as provided in 39-71-503(2)."

19 Section 14. Section 39-71-503, MCA, is amended to
 20 read:

21 "39-71-503. Administration of fund. (1) The division
 22 shall administer the fund and shall pay all proper benefits
 23 to injured employees of uninsured employers.

24 (2) ~~Proper--surpluses--and--reserves--shall--be--kept--for~~
 25 ~~the fund.~~ Surpluses and reserves shall not be kept for the

1 fund. The division shall make such payments as it considers
 2 appropriate as funds become available from time to time. The
 3 payment of weekly disability benefits takes preference over
 4 the payment of medical benefits. No lump-sum payments of
 5 future projected benefits, including impairment awards, may
 6 be made from the fund. The board of investments shall invest
 7 the moneys of the fund. The cost of administration of the
 8 fund shall be paid out of the money in the fund."

9 Section 15. Section 39-71-605, MCA, is amended to
 10 read:

11 "39-71-605. Examination of employee by physician --
 12 effect of refusal to submit to examination -- report and
 13 testimony of physician -- cost. (1) (a) Whenever in case of
 14 injury the right to compensation under this chapter would
 15 exist in favor of any employee, he shall, upon the written
 16 request of his-employer-or the insurer, submit from time to
 17 time to examination by a physician or panel of physicians,
 18 who shall be provided and paid for by such employer--or
 19 insurer, and shall likewise submit to examination from time
 20 to time by any physician or panel of physicians selected by
 21 the division or-any-member-or-examiner-or-referee-thereof.

22 (b) The request or order for such examination shall
 23 fix a time and place therefor, due regard being had to the
 24 convenience of the employee and his physical condition and
 25 ability to attend at the time and place fixed. The employee

shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician or panel of physicians employed by the--employer, the insurer, or the division who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of his the injury or disability, if any, the division, at the request of the claimant,--employer, or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the division for its use in the determination of the controversy involved. The division shall pay the physician or panel of physicians for the examination and shall be reimbursed by the party who requested it.

(3) This section does not apply to impairment

evaluations provided for in [section 24]."

Section 16. Section 39-71-611, MCA, is amended to read:

"39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. ~~In the event an insurer denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the workers' compensation judge.~~ (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18."

Section 17. Section 39-71-612, MCA, is amended to

1 read:

2 "39-71-612. Costs and attorneys' fees that may be
3 assessed against an employer--or insurer by workers'
4 compensation judge. (1) If an employer-or insurer pays or
5 tenders submits a written offer of payment of compensation
6 under chapter 71 or 72 of this title but controversy relates
7 to the amount of compensation due, the case is brought
8 before the workers' compensation judge for adjudication of
9 the controversy, and the award granted by the judge is
10 greater than the amount paid or tendered offered by the
11 employer--or insurer, a reasonable attorney's fee and costs
12 as established by the workers' compensation judge if the
13 case has gone to a hearing may be awarded by the judge in
14 addition to the amount of compensation.

15 ~~(2)--When-an-attorney's-fee-is-awarded-against-an~~
16 ~~employer--or-insurer-under-this-section-there-may-be-further~~
17 ~~assessed-against-the-employer-or-insurer--reasonable--costs,~~
18 ~~fees--and--mileage--for--necessary--witnesses--attending--a~~
19 ~~hearing-on-the-claimant's-behalf--Both-the-necessity-for-the~~
20 ~~witness-and-the-reasonableness-of-the-fees-must-be--approved~~
21 ~~by-the-workers'-compensation-judge.~~

22 (2) An award of attorneys' fees under subsection (1)
23 may only be made if it is determined that the actions of the
24 insurer were unreasonable. Any written offer of payment made
25 30 days or more before the date of hearing must be

1 considered a valid offer of payment for the purposes of this
2 section.

3 (3) A finding of unreasonableness against an insurer
4 made under this section does not constitute a finding that
5 the insurer acted in bad faith or violated the unfair trade
6 practices provisions of Title 33, chapter 18."

7 Section 18. Section 39-71-613, MCA, is amended to
8 read:

9 "39-71-613. Regulation of attorneys' fees --
10 forfeiture of fee for noncompliance. (1) When an attorney
11 represents or acts on behalf of a claimant or any other
12 party on any workers' compensation claim, the attorney shall
13 submit to the division a contract of employment, on a form
14 provided by the division, stating specifically the terms of
15 the fee arrangement between the attorney and the claimant.

16 (2) The administrator of the division may regulate the
17 amount of the attorney's fee in any workers' compensation
18 case. In regulating the amount of the fee, the
19 administrator shall consider:

20 (a) the benefits the claimant gained due to the
21 efforts of the attorney;

22 (b) the time the attorney was required to spend on the
23 case;

24 (c) the complexity of the case; and

25 (d) any other relevant matter the administrator may

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consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing an attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect."

Section 19. Section 39-71-614, MCA, is amended to read:

"39-71-614. Calculation of attorney fees -- limitation. (1) The amount of an attorney's fee assessed against an employer-or insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought before ~~the--workers--compensation--judge~~ to hearing. The attorney must document the time spent ~~and give the--documentation--to the--judge,~~ but the judge is not bound by the documentation submitted.

(2) The judge shall determine a reasonable attorney fee and assess costs. ~~He is not bound by the documentation submitted to him.~~ The hourly fee ~~the--judge--applies~~ rate applied to the time spent must be based on the attorney's customary and current hourly fee rate for legal work performed in this state, subject to a maximum established by the division.

~~(2)(3)~~ This section does not restrict a claimant and

an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an employer-or insurer under 39-71-61 ~~39-71-611~~ or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement."

NEW SECTION. Section 20. Employer not to terminate worker for filing claim -- preference -- jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under this chapter or chapter 72 of this title.

(2) If WHEN an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over new-hires OTHER APPLICANTS for a comparable position that becomes vacant within such 2-year-period if:

(a) the position is consistent with the worker's physical condition and vocational abilities; and

(b) ~~the--worker--is-substantially-equally-qualified-as~~ other applicants.

(3) This preference applies only to employment with the employer for whom the employee was working at the time

1 the injury occurred.

2 (4) The division, department, and workers'
3 compensation court do not have jurisdiction to administer or
4 resolve a dispute under this section. Exclusive jurisdiction
5 is with the district court.

6 Section 21. Section 39-71-701, MCA, is amended to
7 read:

8 "39-71-701. Compensation for injuries----producing
9 temporary total disability. (1) Subject to the limitation in
10 39-71-736, a worker is eligible for temporary total
11 disability benefits when the worker suffers a total loss of
12 wages as a result of an injury and until the worker reaches
13 maximum healing.

14 (2) The determination of temporary total disability
15 must be supported by a preponderance of medical evidence.

16 (3) Weekly compensation benefits for injury
17 producing total temporary total disability shall be 66 2/3%
18 of the wages received at the time of the injury. The maximum
19 weekly compensation benefits shall not exceed \$110--beginning
20 July--1,--1973--Beginning--July-1-1974--the-maximum-weekly
21 compensation-benefits-shall-not-exceed the state's average
22 weekly wage at the time of injury. Total-temporary Temporary
23 total disability benefits shall be paid for the duration of
24 the worker's temporary disability. The weekly benefit amount
25 may not be adjusted for cost of living as provided in

1 39-71-702(5).

2 (2)(4) In cases where it is determined that periodic
3 disability benefits granted by the Social Security Act are
4 payable because of the injury, the weekly benefits payable
5 under this section are reduced, but not below zero, by an
6 amount equal, as nearly as practical, to one-half the
7 federal periodic benefits for such week, which amount is to
8 be calculated from the date of the disability social
9 security entitlement.

10 (5) Notwithstanding subsection (3), beginning July 1,
11 1987, through June 30, 1989, weekly compensation benefits
12 for temporary total disability may not exceed the state's
13 average weekly wage of \$299 established July 1, 1986."

14 Section 22. Section 39-71-702, MCA, is amended to
15 read:

16 "39-71-702. Compensation for injuries----producing
17 permanent total permanent disability. (1) If a worker is no
18 longer temporarily totally disabled and is unable to return
19 to work due to injury, the worker is eligible for permanent
20 total disability benefits. At an insurer's request, an
21 evaluation of all options under [section 36] must be made
22 before permanent total disability status is determined.
23 Permanent total disability benefits must be paid for the
24 duration of the worker's permanent total disability, subject
25 to 39-71-710 and [section 47].

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

~~{1}{3}~~ Weekly compensation benefits for an injury producing--total--permanent resulting in permanent total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury. ~~Total-permanent-disability-benefits-shall-be-paid for-the-duration-of-the-worker's-total-permanent-disability.~~

~~{2}{4}~~ In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid, and ON each succeeding July 1. A worker may not receive more than THAN 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the division over the state's average weekly wage adopted for the previous year, or 3%, whichever

is less.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of \$299 established July 1, 1986."

Section 23. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for injuries---causing PERMANENT partial disability -- IMPAIRMENT AWARDS AND WAGE SUPPLEMENTS. (1) Weekly--compensation--benefits-for-injury producing-partial-disability-shall-be-66-2/3%-of-the--actual diminution--in--the--worker's--earning--capacity--measured-in dollars,--subject--to--a--maximum--weekly--compensation---of one-half-the-state's-average-weekly-wage:

~~{2}--The--compensation--shall-be-paid-during-the-period of-disability,--not-exceeding,--however,--500-weeks-in-cases-of partial---disability,---However,compensation---for---partial disability--resulting--from--the--loss--of--or-injury-to-any member-shall-not-be-payable-for-a-greater--number--of--weeks than--is--specified-in-39-71-705-for-the-loss-of-the-member.~~ THE BENEFITS AVAILABLE FOR PERMANENT PARTIAL DISABILITY ARE IMPAIRMENT AWARDS AND WAGE SUPPLEMENTS. A worker who has reached maximum healing and is not eligible for permanent total disability benefits but who has a medically determined

1 physical restriction as a result of a work-related injury
 2 may be eligible for an impairment award and wage supplement
 3 benefits as follows:

4 (a) The following procedure must be followed for an
 5 impairment award:

6 (i) Each percentage point of impairment is compensated
 7 in an amount equal to 5 weeks times 66 2/3% of the wages
 8 received at the time of the injury, subject to a maximum
 9 compensation rate of one-half of the state's average weekly
 10 wage at the time of injury.

11 (ii) When a worker reaches maximum healing, an
 12 impairment rating is rendered by one or more physicians as
 13 provided for in [section 24]. Impairment benefits are
 14 payable beginning the date of maximum healing.

15 (iii) An impairment award may be paid biweekly or in a
 16 lump sum, at the discretion of the worker. Lump sums paid
 17 for impairments are not subject to the requirements set
 18 forth in 39-71-741, except that lump-sum conversions for
 19 benefits not accrued may be reduced to present value at the
 20 rate set forth by the division in 39-71-741(5).

21 (iv) If a worker becomes eligible for permanent total
 22 disability benefits, the insurer may recover any lump-sum
 23 advance paid to a claimant for impairment, as set forth in
 24 39-71-741(5). Such right of recovery does not apply to
 25 lump-sum benefits paid for the period prior to claimant's

1 eligibility for permanent total disability benefits.

2 (v) If a worker suffers additional injury, an
 3 impairment award payable for the additional injury must be
 4 reduced by the amount of a previous award paid for
 5 impairment to the same site on the body.

6 (b) The following procedure must be followed for a
 7 wage supplement:

8 (i) A worker must be compensated in weekly benefits
 9 equal to 66 2/3% of the difference between the worker's
 10 actual wages received at the time of the injury and the
 11 wages the worker is qualified to earn in the worker's job
 12 pool, subject to a maximum compensation rate of one-half the
 13 state's average weekly wage at the time of injury.

14 (ii) Eligibility for wage supplement benefits begins at
 15 maximum healing and terminates at the expiration of 500
 16 weeks minus the number of weeks for which a worker's
 17 impairment award is payable, subject to 39-71-710. A
 18 worker's failure to sustain a wage loss compensable under
 19 subsection (1)(b)(i) does not extend the period of
 20 eligibility. However, if a worker becomes eligible for
 21 temporary total disability, permanent total disability, or
 22 total rehabilitation benefits after reaching maximum
 23 healing, the eligibility period for wage supplement benefits
 24 is extended by any period for which a worker is compensated
 25 by those benefits after reaching maximum healing.

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(2) The determination of permanent partial disability must be supported by a preponderance of medical evidence.

(3) Notwithstanding subsections SUBSECTION (1) and (2), beginning July 1, 1987, through June 30, 1989, the maximum weekly compensation benefits for permanent partial disability may not exceed \$149.50, which is one-half the state's average weekly wage established July 1, 1986."

NEW SECTION. Section 24. Impairment evaluation -- ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American Medical Association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from a physician of the party's choice. If the claimant and insurer cannot agree upon the rating, the procedure in subsection (3) must be followed.

(3) (a) Upon request of the THE claimant or insurer, the division shall direct a THE claimant to an evaluator for a rating. The evaluator shall:

(i) evaluate the claimant to determine the degree of

impairment, if any, that exists due to the injury; and

(ii) submit a report to the division, the claimant, and the insurer.

(b) Unless the following procedure is followed, the insurer shall begin paying the impairment award, if any, within 10 30 days of the evaluator's mailing of the report:

(i) Either the claimant or the insurer, within 15 days after the date of mailing of the report by the first evaluator, may request that the claimant be evaluated by a second evaluator. If a second evaluation is requested, the division shall direct the claimant to a second evaluator, who shall determine the degree of impairment, if any, that exists due to the injury.

(ii) The reports of both examinations must be submitted to a third evaluator, who may also examine the claimant or seek other consultation. The three evaluators shall consult with one another, and then the third evaluator shall submit a final report to the division, the claimant, and the insurer. The final report must state the degree of impairment, if any, that exists due to the injury.

(iii) Unless either party disputes the rating in the final report as provided in subsection (5), the insurer shall begin paying the impairment award, if any, within 45 days of the date of mailing of the report by the third evaluator.

(4) The division shall appoint impairment evaluators to render ratings under subsection (1). The division shall adopt rules that set forth the qualifications of evaluators and the locations of examinations. An evaluator must be a physician licensed under Title 37, chapter 3. The division may seek nominations from the board of medical examiners.

(5) The cost of impairment evaluations is assessed to ~~a--workers~~ THE insurer, except that the cost of an evaluation under subsection (3)(B)(I) OR (3)(b)(ii) or (3)(b)(iii) is assessed to the requesting party.

(6) A party may dispute a final impairment rating rendered under subsection (3)(b)(iii) (3)(B)(II) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report. Disputes over impairment ratings are not subject to 39-71-605 or to mandatory mediation.

(7) An impairment rating rendered under subsection (3) is presumed correct. This presumption is rebuttable.

Section 25. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- FEE SCHEDULES AND HOSPITAL RATES. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method

1 of determining the median of billed medical fees. These
2 rules shall be modeled on the 1974 revision of the 1969
3 California Relative Value Studies.

4 (3) Beginning January 1, 1988, the division shall
5 establish rates for hospital services necessary for the
6 treatment of injured workers. Approved rates must be in
7 effect for a period of 12 months from the date of approval.
8 The division may coordinate this ratesetting function with
9 other public agencies that have similar responsibilities.

10 (4) Notwithstanding subsection (2), beginning January
11 1, 1988, and ending January 1, 1990, the maximum fees
12 payable by insurers must be limited to the relative value
13 fee schedule established in January 1987. Notwithstanding
14 subsection (3), the hospital rates payable by insurers must
15 be limited to those set in January 1988, until December 31,
16 1989."

17 Section 26. Section 39-71-708, MCA, is amended to
18 read:

19 "39-71-708. Compensation for disfigurement. (1) The
20 division may award proper and equitable indemnity benefits
21 for serious face, head, or neck disfigurement, not to exceed
22 \$2,500, in addition to any other indemnity benefits payable
23 under 39-71-705, 39-71-706, or 39-71-707 39-71-703.

24 (2) No payment under this section shall be in lieu of
25 the separate benefit of medical and hospital services and or

1 of any benefits paid under 39-71-701 for temporary total
2 disability."

3 Section 27. Section 39-71-710, MCA, is amended to
4 read:

5 "39-71-710. Termination of total--disability benefits
6 upon retirement. (1) If a claimant is receiving total
7 disability or rehabilitation compensation benefits and the
8 claimant receives---retirement receives social security
9 retirement benefits or is eligible to receive full social
10 security retirement benefits or disability-social-security
11 benefits-paid-to--the--claimant--are--converted--by--law--to
12 retirement--benefits, the claimant is considered to be
13 retired and no longer in the open labor--market. When the
14 claimant is considered retired, the liability of the insurer
15 is ended for payment of such wage supplement, permanent
16 total DISABILITY, and rehabilitation compensation benefits.
17 This--section--does--not--apply--to--permanent--partial--disability
18 benefits--Medical--benefits--are--expressly--reserved--to--the
19 claimant-- However, the insurer remains liable for temporary
20 total disability benefits, any impairment award, and medical
21 benefits.

22 (2) If a claimant who is eligible to receive social
23 security retirement benefits and is gainfully employed
24 suffers a work-related injury, the insurer retains liability
25 for temporary total disability benefits, any impairment

award, and medical benefits."

NEW SECTION. Section 28. Benefits not due while claimant is incarcerated. A claimant is not eligible for any disability or rehabilitation compensation benefits while the claimant is incarcerated as the result of conviction of a felony. The insurer remains liable for medical benefits. No time limit on benefits otherwise provided in this chapter is extended due to a period of incarceration.

Section 29. Section 39-71-721, MCA, is amended to read:

"39-71-721. Compensation for injury causing death -- limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, ~~as the case may be~~, is entitled to the same compensation as though the death occurred immediately following the injury, ~~but the period during which the death benefit is paid shall be reduced by the period during or for which compensation was paid for the injury.~~ A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly

payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in subsections ~~(2)(a)~~ through ~~(2)(d)~~ ~~of 39-71-116~~ 39-71-116(2)(a) through 39-71-116(2)(d), weekly compensation benefits for an injury causing death are computed ~~at~~ at 66 2/3% of the decedent's wages. The maximum weekly compensation benefits benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation for death benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections ~~(2)(e)~~ and ~~(2)(f)~~ ~~of 39-71-116~~ 39-71-116(2)(e) and 39-71-116(2)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2/3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage AT THE TIME OF INJURY.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of \$3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a widow ~~or widower~~ ~~for life or until remarriage~~, and in the event of

1 ~~remarriage, 2 years~~ benefits must be paid in a lump sum to
 2 ~~the widow or widower~~ surviving spouse for 500 weeks
 3 subsequent to the date of the deceased employee's death or
 4 until the spouse's remarriage, whichever occurs first. After
 5 benefit payments cease to a surviving spouse, death benefits
 6 must be paid to beneficiaries, if any, as defined in
 7 39-71-116(2)(b) through 39-71-116(2)(d).

8 (6) In all cases, benefits must be paid to
 9 beneficiaries, as defined in 39-71-116(2).

10 (7) Benefits paid under this section may not be
 11 adjusted for cost of living as provided in 39-71-702.

12 (8) Notwithstanding subsections (2) and (3), beginning
 13 July 1, 1987, through June 30, 1989, the maximum weekly
 14 compensation benefits for injury causing death may not
 15 exceed the state's average weekly wage of \$299 established
 16 July 1, 1986. Beginning July 1, 1987, through June 30, 1989,
 17 the minimum weekly compensation for injury causing death
 18 shall be \$149.50, which is 50% of the state's average weekly
 19 wage established July 1, 1986, but in no event may it exceed
 20 the decedent's actual wages at the time of death."

21 Section 30. Section 39-71-736, MCA, is amended to
 22 read:

23 "39-71-736. Compensation -- from what date paid.
 24 (1) (a) No compensation may be paid for the first 5 6 days
 25 loss of wages due to an injury. If loss of wages continues

1 for more than 5 days, compensation shall be paid from the
 2 date of injury. A claimant is eligible for compensation
 3 starting with the 7th day of wage loss.

4 (b) However, separate benefits of medical and hospital
 5 services shall be furnished from the date of injury.

6 (2) For the purpose of this section, an injured worker
 7 is not considered to have a wage loss if the worker is
 8 receiving sick leave benefits, except that each day for
 9 which the worker elects to receive sick leave counts 1 day
 10 toward the 6-day waiting period."

11 Section 31. Section 39-71-737, MCA, is amended to
 12 read:

13 "39-71-737. Compensation to run consecutively --
 14 exceptions. (1) Compensation shall run consecutively and not
 15 concurrently, and payment shall not be made for two classes
 16 of disability over the same period except that indemnity
 17 benefits under 39-71-705 through 39-71-708 and temporary
 18 total disability benefits may be paid concurrently. However,
 19 subject to the provisions of 39-71-741, this section does
 20 not prevent:

21 (a) the payment of a lump sum advance settlement
 22 against projected future permanent partial indemnity
 23 benefits while a claimant is receiving temporary total
 24 disability benefits; or

25 (b) a settlement of a combination of different classes

1 of-disability-benefits-into-a-lump-sum-or-into-a-combination
2 of-periodic-and-lump-sum-payments.

3 {2}--A-controversy-between-a-claimant--and--an--insurer
4 regarding--a--settlement--authorized-under-this-section-is-a
5 dispute--for--which--the--workers'--compensation--judge--has
6 jurisdiction--to-make-a-determination; impairment awards and
7 auxiliary rehabilitation benefits may be paid concurrently
8 with other classes of benefits, and wage supplement and
9 partial rehabilitation benefits may be paid concurrently."

10 Section 32. Section 39-71-741, MCA, is amended to
11 read:

12 "39-71-741. Compromise settlements and, lump-sum
13 payments, AND LUMP-SUM ADVANCE PAYMENTS ---division-approval
14 required. {1}--The--biweekly--payments-provided-for-in-this
15 chapter-may-be-converted,--in--whole--or--in--part,--into--a
16 lump-sum-payment. Regardless-of-the-date-of-the-injury-or-of
17 a-prior-lump-sum-payment, a-lump-sum-conversion-of-permanent
18 total--biweekly--payments--awarded--or--paid--after--April-15,
19 1985, must-equal-the-estimated-present-value--of--the--total
20 unpaid--permanent-total-biweekly-payments, assuming-interest
21 at-7%--per-year, compounded-annually, unless--the--conversion
22 improves--the--financial--condition--of--the--worker--or-his
23 beneficiary,--as--provided--in--subsection--{2}{b}--If--the
24 estimated--duration--of--the--compensation--period--is--the
25 remaining-life-expectancy-of-the-claimant-or-the-claimant's

1 beneficiary,--the--remaining--life--expectancy--must--be
2 determined-by-using-the-most-recent-table-of-life-expectancy
3 in-years-as-published-by-the-United-States--national--center
4 for-health-statistics.

5 {2}--The--conversion--can-only-be-made-upon-the-written
6 application--of--the--injured--worker--or--the--worker's
7 beneficiary,--with--the--concurrence--of--the--insurer,--and
8 approval-of-the-conversion-rests-in-the--discretion--of--the
9 division--as--to--the-amount-of-the-lump-sum-payment-and-the
10 advisability-of-the-conversion; it-is-presumed-that-biweekly
11 payments-are-in-the-best-interests--of--the--worker--or--his
12 beneficiary. The-approval-or-award-of-a-lump-sum-conversion
13 by-the-division-or-the-workers'--compensation-judge--must--be
14 the--exception,--not--the--rule,--and-may-be-given-only-if-the
15 worker-or-his-beneficiary-demonstrates-that-his--ability--to
16 sustain-himself-financially-is-more-probable-with-a-whole-or
17 partial--lump-sum-conversion--than-with-the-biweekly-payments
18 and-his-other-available-resources. The--following--procedure
19 must--be--used-by-the-division-and-the-workers'--compensation
20 judge--in--determining--whether--a--lump-sum--conversion--of
21 permanent--total--biweekly--payments--will--be--approved--or
22 awarded.

23 {a}--The--difference--between--the--present--discounted
24 value--of--a--lump-sum-and-the-future-value-of-the-biweekly
25 payments--cannot--be--the--only--grounds--for--approving--or

15/1

1 awarding-a-lump-sum-conversion:

2 (b)--A--lump-sum-conversion-that-improves-the-financial
3 condition-of-the-worker-or-his-beneficiary-over--what--would
4 have--been--reasonably--expected--had--the--worker--not-been
5 injured-or-died-can-be--approved--or--awarded--only--if--the
6 lump-sum--conversion-is-limited-to-the-purchase-price-to-the
7 insurer-of-an-annuity-that-would-yield-an-amount-equal--to
8 the-biweekly-benefits-payable-over-the-estimated-duration-of
9 the--compensation-period. The-worker-or-his-beneficiary-must
10 demonstrate-the-financial-condition--that--would--have--been
11 reasonably--expected,--taking--into--consideration--his-age,
12 education, work-experience, and-probable-job-promotions--and
13 pay-increases.

14 (c)--If--the--existing--delinquent-or-outstanding-debts
15 are-used-as-grounds-for-a-lump-sum-conversion, the-worker-or
16 his-beneficiary-must-demonstrate-through-a-debt-management
17 plan--that--a-lump-sum--for--that--purpose-is-necessary-to
18 sustain-himself-financially.

19 (d)--If-a-business-venture-is-used--as--grounds--for--a
20 lump-sum--conversion,--the--worker--or--his-beneficiary-must
21 demonstrate-through-a-business-plan-that-a-lump-sum-for-that
22 purpose-is-necessary-to-sustain--himself--financially. The
23 business-plan-must--at--least--show-the-feasibility-of-the
24 business, given-the-market-conditions-in-the-intended-market
25 area, and-the-cash-that--will--be--available--to--him--on--a

1 biweekly--basis--after--start-up--costs--and--owner-business
2 expenses-are-considered-throughout-the-expected-life-of--the
3 venture.

4 (3)--If--the--division--finds--that--an-application-for
5 lump-sum-conversion--does--not--adequately--demonstrate--the
6 ability--of-the-worker-or-his-beneficiary-to-sustain-himself
7 financially,--the--division--may--order,--at--the--insurer's
8 expense,--financial,--medical,--vocational--rehabilitation,
9 educational,--or--other--evaluative--studies--to--determine
10 whether-a-lump-sum-conversion-is-in-the-best-interest-of-the
11 worker-or-his-beneficiary.

12 (4)--The--division--has--full--power,--authority,--and
13 jurisdiction-to-allow--and--approve--compromises--of--claims
14 under--this--chapter. All--settlements--and--compromises-of
15 compensation-provided-in-this-chapter-are-void--without--the
16 approval--of--the-division. Approval-of-the-division-must-be
17 in--writing. The--division--shall--directly--notify--every
18 claimant--of--any--division--order--approving--or--denying-a
19 claimant's-settlement-or-compromise-of-a-claim.

20 (5)--A-controversy-between-a-claimant--and--an--insurer
21 regarding--the--conversion--of-biweekly-payments-into-a-lump
22 sum--is--considered--a-dispute--for--which--the--workers'
23 compensation-judge-has-jurisdiction-to-make-a-determination.

24 (1) (a) Benefits may be converted in whole to a lump sum:

25 (i) if a claimant and an insurer dispute the initial

compensability of an injury; and

(ii) if the claimant and insurer agree TO A SETTLEMENT.

(b) The agreement is subject to division approval. The division may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the division or by any court.

(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(2) (a) If an insurer has accepted initial liability for an injury, permanent total and permanent partial wage supplement benefits may be converted in whole to a lump-sum payment.

(b) The conversion may be made only upon agreement between a claimant and an insurer.

(c) The agreement is subject to division approval. The division may approve an agreement if:

(i) there is a reasonable dispute concerning the amount of the insurer's future liability or benefits; or

(ii) the amount of the insurer's projected liability is reasonably certain and the settlement amount is not substantially less than the present value of the insurer's liability.

(d) The parties' failure to reach agreement is not a dispute over which a mediator or the worker's WORKERS' compensation court has jurisdiction.

(E) UPON APPROVAL, THE AGREEMENT CONSTITUTES A COMPROMISE AND RELEASES RELEASE SETTLEMENT AND MAY NOT BE REOPENED BY THE DIVISION OR BY ANY COURT.

(3) (a) Permanent partial wage supplement benefits may be converted in part to a lump-sum advance.

(b) The conversion may be made only upon agreement between a claimant and an insurer.

(c) The agreement is subject to division approval. The division may approve an agreement if the parties demonstrate that the claimant has financial need that:

(i) relates to the necessities of life or relates to an accumulation of debt incurred prior to injury; and

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(4) Permanent total disability benefits may be converted to a lump-sum advance. The total of all lump-sum ADVANCE payments to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer.

Approval of the lump-sum ADVANCE payment rests in the discretion of the division. The approval or award of a lump-sum ADVANCE payment by the division or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture as set forth in [section 47]; and

(b) arises subsequent to the date of accident INJURY or arises because of reduced income as a result of the accident INJURY.

(5) (a) An insurer may recoup any lump-sum advance amortized at the rate established by the division, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the division must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as

published by the United States national center for health statistics.

(6) The division has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements or lump-sum advances agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the division. Approval by the division must be in writing. The division shall directly notify a claimant of a division order approving or denying a claimant's compromise or lump-sum payment.

(7) Subject to [section 8], a dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum advance under subsection (4) is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum advance but the division disapproves the agreement, the parties may request the workers' compensation court to review the division's decision."

Section 33. Section 39-71-803, MCA, is amended to read:

"39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein

provided is distinguished from traumatic loss of hearing,
 which is-governed-by-the-specific-loss-schedule-provided-for
 in-39-71-705 may be compensated under parts 7 and 10 of this
chapter."

NEW SECTION. Section 34. Definitions. As used in this
 chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the
 nonprofit, independent, fee-structured organization that is
 a member of the national commission for health certifying
 agencies and that is established to certify rehabilitation
 practitioners.

(2) "Disabled worker" means one who has a medically
 determined restriction resulting from a work-related injury
 that precludes the worker from returning to the job the
 worker held at the time of the injury.

(3) "I.W.R.P." means an individualized, written
 rehabilitation program prepared by the department of social
 and rehabilitation services.

(4) "Rehabilitation benefits" means benefits provided
 in [sections 59-through-61 44 THROUGH 46] and 39-71-1003.

(5) "Rehabilitation provider" means a rehabilitation
 counselor, other than the department of social and
 rehabilitation services, certified by the board for
 rehabilitation certification and designated by the insurer
 to the division.

(6) "Rehabilitation services" consists of a program of
 evaluation, planning, and delivery of goods and services to
 assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs typically
 available for which a worker is qualified, consistent with
 the worker's age, education, vocational experience and
 aptitude and compatible with the worker's physical
 capacities and limitations as the result of the worker's
 injury. Lack of immediate job openings is not a factor to be
 considered.

(b) A worker's job pool may be either local or
 statewide, as follows:

(i) a local job is one either in a central city that
 has within its economically integrated geographical area a
 population of less than 50,000 or in a city with a
 population of more than 50,000 as determined by the
 division; or

(ii) a statewide job is one anywhere in the state of
 Montana.

Section 35. Section 39-71-1003, MCA, is amended to
 read:

"39-71-1003. Eligibility for vocational rehabilitation
expenses benefits--under--chapter--not--affected-----other
 expenses-payable. The-eligibility-of-any-injured--worker--to
 receive--other--benefits-under-the-Workers'-Compensation-Act

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is-in-no-way-affected-by--his--entrance--upon--a--course--of vocational--rehabilitation--as--herein--provided;--A--person undergoing vocational rehabilitation must be paid--temporary total--disability--benefits;--In-addition-thereto, he may be paid, upon the certification of the department of social and rehabilitation services from funds herein provided:

(1)--his-actual-and-necessary-travel-expenses-from--his place-of-residence-to-the-place-of-training-and-return;

(2)--his-living-expenses-while-in-training--in-an-amount not-in-excess-of-\$50-per-week; and

(3)--his--expenses--for--tuition,--books,--and-necessary equipment-in-training; Upon certification by the department of social and rehabilitation services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act."

NEW SECTION. Section 36. Rehabilitation goal and options. (1) The goal of rehabilitation services is to return a disabled worker to work, with a minimum of retraining, as soon as possible after an injury occurs.

(2) The first appropriate option among the following must be chosen for the worker:

(a) return to the same position;

(b) return to a modified position;

(c) return to a related occupation suited to the

claimant's education and marketable skills;

(d) on-the-job training;

(e) short-term retraining program (less than 24 months);

(f) long-term retraining program (48 months maximum);

or

(g) self-employment.

(3) Whenever possible, employment in a worker's local job pool must be considered and selected prior to consideration of employment in a worker's statewide job pool.

NEW SECTION. Section 37. Rehabilitation services -- required and provided by insurers and the department of social and rehabilitation services. (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider and notifying the division;

(b) the division by requiring the insurer to designate a rehabilitation provider; or

(c) a disabled worker through a request to the division. The division shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered:

(a) through a rehabilitation counselor certified by the board of rehabilitation certification;

(b) by a vocational rehabilitation counselor employed by the department of social and rehabilitation services; or

(c) by both.

(3) A disabled worker served by the department of social and rehabilitation services may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2.

NEW SECTION. Section 38. Designated rehabilitation provider -- evaluation and report. (1) If a disabled worker is capable of returning to work, the designated rehabilitation provider shall evaluate and determine the return-to-work capabilities of the disabled worker pursuant to [section 36(2)(a) through 36(2)(d)].

(2) If an insurer's designated rehabilitation provider has determined that all appropriate services have been provided to the disabled worker under [section 36(2)(a) through 36(2)(d)] and the worker has returned to work, the insurer shall document that determination to the division.

(3) If the worker has not returned to work as provided in subsection (2), the insurer shall notify the division. The division shall then designate a rehabilitation panel as provided in [section 39] and refer the worker to the panel.

NEW SECTION. Section 39. Rehabilitation panels. (1)

The division shall designate and administer rehabilitation panels. The purpose of a panel is to advise the division on a worker's eligibility for rehabilitation services. Each panel shall issue to the division a report as provided in [section 40].

(2) Each panel must be composed of at least:

(a) a representative of the department of social and rehabilitation services;

(b) a representative from the department who has expertise in job service listings, occupational supply and demand in Montana, and other Montana career information; and

(c) a representative from the division, who shall chair the panel.

(3) The division shall pay the cost of the panel.

(4) The insurer shall provide the panel with the worker's medical records, rehabilitation reports, and other pertinent information in its possession.

(5) The panel may consult with the worker, insurer, medical and rehabilitation providers, and any other person and may have access to any information it considers pertinent to carry out its responsibility.

(6) Information received by the panel is confidential, except that it may be disclosed to the worker, insurer, and division.

NEW SECTION. Section 40. Rehabilitation panel report.

(1) The rehabilitation panel shall:

(a) review all records, statements, and other pertinent information; and

(b) prepare a report to the division, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in [section 36]; and

(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated earnings from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated earnings, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated earnings; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the

worker's anticipated earnings.

(4) An insurer or a worker on his own motion may submit information to the panel prior to the time the panel issues its final report.

NEW SECTION. Section 41. Division's order of determination -- exception -- hearing. (1) The division shall issue an initial order of determination within 10 working days of receipt of a report from a rehabilitation panel. If the initial order of determination differs from the findings and recommendations of the panel, the order must state the reasons for the difference.

(2) Within 10 working days from the date the initial order of determination is mailed, a party may submit a written exception to the order. On its own motion or at the request of any party, the division shall conduct a hearing. The division shall issue a final order of determination within 20 working days of the hearing.

(3) If no party submits an exception within 10 working days, the initial order of determination becomes the final order of determination and must be issued by the division.

(4) Within 10 working days after the date of mailing of the division's final order of determination, an appeal may be taken to the workers' compensation court.

NEW SECTION. Section 42. Referral to department of social and rehabilitation services for retraining --

benefits -- appeals. (1) If in its final order of determination the division considers a worker able to return to work in the worker's job pool, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the division finds the worker needs retraining, the division shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under [section 36(2)(d) through 36(2)(f)] and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

(3) If the department of social and rehabilitation services determines that a disabled worker has a vocational handicap, the worker is eligible for funds under 39-71-1003 up to the maximum duration established in the division's final order of determination.

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the division the opportunity to designate a rehabilitation panel to provide a report, the

insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in [section 49].

(5) The department of social and rehabilitation services, in providing rehabilitation services to a worker referred to it by the division, shall consider but is not bound by the rehabilitation panel report.

(6) If the department of social and rehabilitation services has determined that all appropriate rehabilitation services have been provided to a disabled worker, the department shall document that determination to the division.

(7) The appeal process before the board of social and rehabilitation services APPEALS provided for in 53-7-106 is the exclusive remedy for a person aggrieved in the receipt of services provided by the department of social and rehabilitation services.

NEW SECTION. Section 43. Agreement between worker and insurer regarding option. A worker and an insurer may agree that an option in [section 36] is appropriate without following the procedures provided in this part. Failure to reach agreement is not a dispute under [section 8].

NEW SECTION. Section 44. Total rehabilitation benefits during period of rehabilitation services --

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1 limitation -- termination. (1) A worker who no longer is
2 temporarily totally disabled but meets the definition of a
3 disabled worker may be eligible for total rehabilitation
4 benefits.

5 (2) Eligibility for total rehabilitation benefits
6 begins on the date of maximum healing or the date notice is
7 given to the division by the insurer that a rehabilitation
8 provider has been designated, whichever is later.

9 (3) Benefits must be paid at the disabled worker's
10 temporary total disability rate for a period not exceeding
11 26 weeks from the date of eligibility, except that the
12 division may extend the period for good cause. The insurer
13 may extend the benefits without division approval but must
14 notify the division of the extension.

15 (4) Total rehabilitation benefits under this section
16 terminate when:

17 (a) a worker returns to work;

18 (b) a worker is qualified to return to work under the
19 priorities in [section 36] pursuant to a division order; or

20 (c) an I.W.R.P. is submitted to the division by the
21 department of social and rehabilitation services.

22 (5) The insurer shall provide written notice to the
23 worker and division that benefits have been terminated.

24 NEW SECTION. Section 45. Wage supplement and partial
25 rehabilitation benefits. (1) A worker who is in a

1 rehabilitation program under [section 42] in accordance with
2 nd AND for the maximum duration established by a final order
3 of determination by the division is eligible to receive the
4 following benefits:

5 (a) wage supplement benefits as provided in 39-71-703
6 but with the rate based on 66 2/3% of the worker's actual
7 wages received at the time of injury, subject to a maximum
8 of one-half the state's average weekly wage; and

9 (b) a partial rehabilitation benefit that, together
10 with the wage supplement provided in subsection (1)(a),
11 provides the worker with weekly benefits equal to the
12 worker's temporary total disability rate.

13 (2) After the worker completes the rehabilitation
14 program, the worker's further eligibility, if any, for wage
15 supplement benefits under 39-71-703 is reduced by the number
16 of weeks of wage supplement benefits received under
17 subsection (1)(a).

18 (3) Notwithstanding subsection (1)(a), beginning July
19 1, 1987, through June 30, 1989, the maximum weekly
20 compensation benefit under that subsection may not exceed
21 \$149.50, which is one-half the state's weekly wage
22 established July 1, 1986.

23 NEW SECTION. Section 46. Auxiliary rehabilitation
24 benefits. In addition to benefits otherwise provided in this
25 chapter, separate benefits not exceeding a TOTAL OF \$4,000

total may be paid by the insurer for:

(1) reasonable travel and relocation expenses used to:

(a) search for new employment;

(b) return to work but in a new location; and

(c) implement a rehabilitation program pursuant to a final order of determination by the division; and

(2) reasonable participation with an employer in an on-the-job training program.

NEW SECTION. Section 47. Self-employment -- criteria.

(1) A worker who is eligible for permanent total disability benefits may be eligible for a self-employment venture. A lump sum of \$20,000 or less of permanent total disability benefits may be granted under 39-71-741 to assist the worker in the self-employment venture. Any previous lump-sum advance made under 39-71-741(4) must be considered so that the total amount of lump-sum payments of permanent total disability benefits does not exceed \$20,000.

(2) In addition to meeting the requirements set forth in 39-71-741, the self-employment venture must be considered feasible under criteria set forth by the division.

(3) When the worker begins the self-employment venture, his eligibility for permanent total disability benefits ends and BUT the worker may be eligible for permanent partial disability benefits under 39-71-703.

(4) If a worker again becomes eligible for permanent

total disability benefits, the insurer may recoup any lump sum of permanent total disability benefits awarded for a self-employment venture, as provided in 39-71-741.

NEW SECTION. Section 48. Exchange of information. The department of social and rehabilitation services, the insurer's designated rehabilitation provider, and the division shall provide to one another case information as necessary to carry out the purposes of this part.

NEW SECTION. Section 49. Termination of benefits for noncooperation with rehabilitation services PROVIDER OR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES -- division hearing and appeal. (1) If an insurer believes a worker is refusing unreasonably to cooperate with the rehabilitation provider OR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, the insurer, with 14 days' notice to the worker and division on a form approved by the division, may terminate any rehabilitation benefits the worker is receiving under this part until the worker cooperates. If the worker is receiving wage supplement benefits, those benefits must continue until the division's determination under subsection (3) is made.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the division within 10 working days after the date of the 14-day notice. The worker or insurer may request a hearing or the division

1 may hold a hearing on its own motion. The division shall
2 issue an order within 30 days of the hearing.

3 (3) If no exceptions are timely filed or the division
4 determines the worker unreasonably refused to cooperate, the
5 insurer may terminate wage loss supplement benefits the
6 worker is receiving until the worker cooperates with the
7 rehabilitation provider. If the worker prevails at a hearing
8 before the division, it may award attorney fees and costs to
9 the worker under 39-71-612.

10 (4) Within 10 working days after the division mails
11 its order to the party's last-known address, a party may
12 appeal to the workers' compensation court.

13 NEW SECTION. Section 50. Division jurisdiction over
14 REHABILITATION disputes under--this--part -- appeals. In
15 addition to pursuing the hearing opportunities provided in
16 [sections 41 and 49], a party may bring a dispute arising
17 under the provisions of this part, except for a dispute over
18 which the department of social and rehabilitation services
19 has jurisdiction under [section 42], before the division
20 under the contested case provisions of the Montana
21 Administrative Procedure Act, Title 2, chapter 4, part 6,
22 and any rules promulgated by the division. Within 10 days
23 after mailing of the division's final order, an interested
24 party may appeal to the workers' compensation court.

25 Section 51. Section 39-71-2106, MCA, is amended to

1 read:

2 "39-71-2106. Requiring security of employer. (1) The
3 division may require any employer who elects to be bound by
4 compensation plan No. 1 to provide a security deposit. Such
5 security deposit may be a surety bond, government bond, or
6 letter of credit approved by the division and must be the
7 greater of:

8 (a) \$250,000; or
9 (b) an average of the workers' compensation
10 liabilities incurred by the employer in Montana for the past
11 3 calendar years.

12 ~~(1)~~(2) If the division finds that an employer has lost
13 his solvency or financial ability to pay the compensation
14 herein provided to be paid which might reasonably be
15 expected to be chargeable to the employer during the fiscal
16 year to be covered by the permission or that the employer is
17 an association, corporation, or organization of individual
18 employers seeking permission to operate under compensation
19 plan No. 1, the division must require the employer, before
20 granting to him permission or before continuing or engaging
21 in such employment subject to the provisions of compensation
22 plan No. 1, to give security IN ADDITION TO THE SECURITY
23 DESCRIBED IN SUBSECTION (1) for the payment of compensation,
24 which security must be in such an amount as the division
25 finds is reasonable and necessary to meet all liabilities of

1 the employer which may reasonably and ordinarily be expected
2 to accrue during the fiscal year.

3 ~~{2}~~{3} The security PROVIDED FOR IN SUBSECTION (2)
4 must be deposited with the division and may be a certain
5 estimated percent of the employer's last preceding annual
6 payroll or a certain percent of the established amount of
7 his annual payroll for the fiscal year; or the security may
8 be in the form of a bond or undertaking executed to the
9 division in the amount to be fixed by it with two or more
10 sufficient sureties, which undertaking must be conditioned
11 that the employer will well and truly pay or cause to be
12 paid all sums and amounts for which the employer shall
13 become liable under the terms of this chapter to his
14 employees during the fiscal year; or such security may
15 consist of any state, county, municipal, or school district
16 bonds or the bonds or evidence of indebtedness of any
17 individuals or corporations which the division deems
18 solvent; and every such deposit and the character and amount
19 of such securities shall at all times be subject to
20 approval, revision, or change by the division as in its
21 judgment may be required, and upon proof of the final
22 payment of the liability for which such securities are
23 given, such securities or any remaining part thereof shall
24 be returned to the depositor.

25 ~~{3}~~{4} The division is liable for the value and

1 safekeeping of all such deposits or securities and shall, at
2 any time, upon demand of a bondsman or the depositor,
3 account for the same and the earnings thereof."

4 NEW SECTION. Section 52. Purpose. The purpose of
5 [sections 52 through 57] is to prevent when possible the
6 filing in the workers' compensation court of actions by
7 claimants or insurers relating to claims under chapter 71 or
8 72 of this title if an equitable and reasonable resolution
9 of the dispute may be effected at an earlier stage. To
10 achieve this purpose, [section 52 through 57] provide for a
11 procedure for mandatory, nonbinding mediation.

12 NEW SECTION. Section 53. Department authority --
13 rules. (1) The department shall designate mediators and
14 shall implement the provisions of [sections 52 through 57].

15 (2) The department may adopt the rules necessary to
16 implement [sections 52 through 57]. The rules may prescribe:

17 (a) the qualifications of mediators; and
18 (b) a procedure for the conduct of mediation
19 proceedings.

20 (3) The cost to the department of implementing
21 [sections 52 through 57] must be paid out of the workers'
22 compensation administration fund.

23 NEW SECTION. Section 54. Mandatory, nonbinding
24 mediation. (1) Except as otherwise provided, in a dispute
25 arising under chapter 71 or 72 of this title, the insurer

1/27

1 and claimant shall mediate any issue concerning benefits and
2 the mediator shall issue a report following the mediation
3 process recommending a solution to the dispute before either
4 party may file a petition in the workers' compensation
5 court.

6 (2) The resolution recommended by the mediator is
7 without administrative or judicial authority and is not
8 binding on the parties.

9 NEW SECTION. Section 55. Duties of mediator. A
10 mediator shall assist the parties in negotiating a
11 resolution to their dispute by:

12 (1) facilitating an exchange of information between
13 the parties;

14 (2) assuring that all relevant evidence is brought
15 forth during the mediation process;

16 (3) suggesting possible solutions to issues of dispute
17 between the parties;

18 (4) recommending a solution; and

19 (5) assisting the parties to voluntarily resolve their
20 dispute.

21 NEW SECTION. Section 56. Limitations on mediation
22 proceedings. (1) Mediation proceedings are:

23 (a) held in private;

24 (b) informal and held without a verbatim record; and

25 (c) confidential.

1 (2) All communications, verbal or written, from the
2 parties to the mediator and any information and evidence
3 presented to the mediator during the proceeding are
4 confidential.

5 (3) A mediator's files and records are closed to all
6 but the parties.

7 (4) (a) A mediator may not be called to testify in any
8 proceeding concerning the issues discussed in the mediation
9 process.

10 (b) Neither the mediator's report nor any of the
11 information or recommendations contained in it are
12 admissible as evidence in any action subsequently brought in
13 any court of law.

14 (5) Notwithstanding subsections (1) through (4), a
15 mediator may issue a report and the parties and the mediator
16 may be required to attend a conference as set forth in
17 [section 57].

18 NEW SECTION. Section 57. Mediation procedure. (1)
19 Except as otherwise provided, a claimant or an insurer
20 having a dispute relating to benefits under chapter 71 or 72
21 of this title may petition the department for mediation of
22 the dispute.

23 (2) A party may take part in mediation proceedings
24 with or without representation.

25 (3) The mediator shall review the division file for

1 the case and may receive any additional documentation or
2 evidence either party submits.

3 (4) The mediator shall request that each party offer
4 argument summarizing the party's position. A party's
5 argument must include the evidence the party would present
6 if the case were being presented to the worker's
7 compensation judge but is not limited by the rules of
8 evidence.

9 (5) After the parties have presented all their
10 information and evidence to the mediator, he shall recommend
11 a solution to the parties within a reasonable time to be
12 established by rule.

13 (6) A party shall notify the mediator within 45 days
14 of the mailing of his report whether the party accepts the
15 mediator's recommendation. If either party does not accept
16 the mediator's recommendation, the party may petition the
17 workers' compensation court for resolution of the dispute.

18 (7) (a) If a mediator determines that either party
19 failed to cooperate in the mediation process, the mediator
20 shall prepare a written report setting forth the
21 determination and the grounds for the determination. The
22 report must be mailed to the parties and to the workers'
23 compensation court. Unless a party disputes the
24 determination as set forth in subsection (7)(c), the parties
25 shall repeat the mediation process, but only one time.

1 (b) A mediator may determine that a party has failed
2 to cooperate in the mediation process only if the party
3 failed to:

4 (i) supply information or offer a summary of the
5 party's position as reasonably requested by the mediator;

6 (ii) attend scheduled mediation conferences unless
7 excused by the mediator; or

8 (iii) listen to and review the information and position
9 offered by the opposing party.

10 (c) If a party disputes a mediator's determination
11 that the party failed to cooperate in the mediation process,
12 the party may file a petition with the workers' compensation
13 court. Upon receipt of a petition, the court shall summon
14 the parties and the mediator to determine by oral discussion
15 whether the mediator's determination of noncooperation is
16 supportable. If the court finds that the mediator's
17 determination is supportable, the court may order the
18 parties to attempt a second time to mediate their dispute.

19 Section 58. Section 39-71-2901, MCA, is amended to
20 read:

21 "39-71-2901. Location of office -- court powers. (1)
22 The principal office of the workers' compensation judge
23 shall be in the city of Helena.

24 (2) The workers' compensation court has power to:

25 (a) preserve and enforce order in its immediate the

1 presence;

2 (b) provide for the orderly conduct of proceedings
3 before it and its officers;

4 (c) compel obedience to its judgments, orders, and
5 process in the same manner and by the same procedures as in
6 civil actions in district court;

7 (d) compel the attendance of persons to testify; and

8 (e) punish for contempt in the same manner and by the
9 same procedures as in district court."

10 Section 59. Section 39-71-2903, MCA, is amended to
11 read:

12 "39-71-2903. Administrative procedure act and rules of
13 evidence applicable ---judge-not-bound-by-rules-of-evidence.

14 All proceedings and hearings before the workers'
15 compensation judge shall be in accordance with the
16 appropriate provisions of the Montana Administrative
17 Procedure Act. ~~However, the~~ The workers' compensation judge
18 is not bound by common law and statutory rules of evidence."

19 Section 60. Section 39-71-2905, MCA, is amended to
20 read:

21 "39-71-2905. Petition to workers' compensation judge.
22 A claimant or an insurer who has a dispute concerning any
23 benefits under chapter 71 of this title may petition the
24 workers' compensation judge for a determination of the
25 dispute after satisfying dispute resolution requirements

1 otherwise provided in this chapter. The judge, after a
2 hearing, shall make a determination of the dispute in
3 accordance with the law as set forth in chapter 71 of this
4 title. If the dispute relates to benefits due a claimant
5 under chapter 71, the judge shall fix and determine any
6 benefits to be paid and specify the manner of payment. The
7 After parties have satisfied dispute resolution requirements
8 provided elsewhere in this chapter, the workers'
9 compensation judge has exclusive jurisdiction to make
10 determinations concerning disputes under chapter 71, except
11 as provided in 39-71-516 and [section 20]. The penalties and
12 assessments allowed against an insurer under chapter 71 are
13 the exclusive penalties and assessments that can be assessed
14 by the workers' compensation judge against an insurer for
15 disputes arising under chapter 71."

16 Section 61. Section 39-71-2907, MCA, is amended to
17 read:

18 "39-71-2907. Increase in award for unreasonable delay
19 or refusal to pay. (1) When payment of compensation has been
20 unreasonably delayed or refused by an insurer, either prior
21 or subsequent to the issuance of an order by the workers'
22 compensation judge granting a claimant compensation
23 benefits, the full amount of the compensation benefits due a
24 claimant, between the time compensation benefits were
25 delayed or refused and the date of the order granting a

claimant compensation benefits, may be increased by the workers' compensation judge by 20%. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(2) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

Section 62. Section 39-71-2909, MCA, is amended to read:

"39-71-2909. Authority to review, diminish, or increase awards. --- limitation. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge or benefits received by a claimant through settlement agreements. --- However, --- the judge may not change any final settlement or award of compensation more than 4 years after the settlement has been approved by the division or any order approving a full and final compromise settlement of compensation."

NEW SECTION. Section 63. Signing of petitions, pleadings, motions, and other papers -- requirements -- sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in his individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign his petition, pleading, motion, or other paper and state his address.

(3) The signature of an attorney or party constitutes a certificate by him that:

(a) he has read the petition, pleading, motion, or other paper;

(b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or BY a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion

1 or upon its own initiative, shall impose an appropriate
 2 sanction upon the person who signed it, a represented party,
 3 or both. The sanction may include an order to pay to the
 4 other party or parties the amount of the reasonable expense
 5 incurred because of the filing of the petition, pleading,
 6 motion, or other paper, including reasonable attorney fees.

7 Section 64. Section 39-72-102, MCA, is amended to
 8 read:

9 "39-72-102. Definitions. As used in this chapter,
 10 unless the context requires otherwise, the following
 11 definitions apply:

12 (1) "Beneficiary" is as defined in 39-71-116(2).

13 (2) "Child" is as defined in 39-71-116(4).

14 (3) "Disablement" means the event of becoming
 15 physically incapacitated by reason of an occupational
 16 disease from performing work in the normal--labor--market
 17 worker's job pool. Silicosis, when complicated by active
 18 pulmonary tuberculosis, is presumed to be total disablement.
 19 "Disability", "total disability", and "totally disabled" are
 20 synonymous with "disablement", but they have no reference to
 21 "partial permanent partial disability".

22 (4) "Division" is as defined in 39-71-116(5).

23 (5) "Employee" is as defined in 39-71-118.

24 (6) "Employer" is as defined in 39-71-117.

25 (7) "Husband" is as defined in 39-71-116(7).

1 (8)(7) "Independent contractor" is as defined in
 2 39-71-120.

3 (9)(8) "Insurer" is as defined in 39-71-116(8).

4 (10)(9) "Invalid" is as defined in 39-71-116(9).

5 (11)(10) "Occupational disease" means all--diseases
 6 arising-out-of-or-contracted--from--and--in--the--course--of
 7 employment harm as-defined-in, DAMAGE, OR DEATH AS SET FORTH
 8 IN 39-71-119(1) arising out of or contracted in the course
 9 and scope of employment but-which AND is caused by events
 10 occurring on more than a single day or work shift. The term
 11 does not include a physical or mental condition arising from
 12 emotional or mental stress or from a nonphysical stimulus or
 13 activity.

14 (12)(11) "Order" is as defined in 39-71-116(10).

15 (13)(12) "Pneumoconiosis" means a chronic dust disease
 16 of the lungs arising out of employment in coal mines and
 17 includes anthracosis, coal workers' pneumoconiosis,
 18 silicosis, or anthracosilicosis arising out of such
 19 employment.

20 (14)(13) "Silicosis" means a chronic disease of the
 21 lungs caused by the prolonged inhalation of silicon dioxide
 22 (S10-SB2 (SI02)) and characterized by small discrete nodules
 23 of fibrous tissue similarly disseminated throughout both
 24 lungs causing the characteristic x-ray pattern and by other
 25 variable clinical manifestations.

1 ~~{15}~~(14) "Wages" is as defined in 39-71-116(20)
2 [section 4].

3 ~~{16}-"Wife"-is-as-defined-in-39-71-116(21)-~~

4 ~~{17}~~(15) "Year" is as defined in 39-71-116(6)(8) and
5 39-71-116(22)."

6 Section 65. Section 45-6-301, MCA, is amended to read:

7 "45-6-301. Theft. (1) A person commits the offense of
8 theft when he purposely or knowingly obtains or exerts
9 unauthorized control over property of the owner and:

10 (a) has the purpose of depriving the owner of the
11 property;

12 (b) purposely or knowingly uses, conceals, or abandons
13 the property in such manner as to deprive the owner of the
14 property; or

15 (c) uses, conceals, or abandons the property knowing
16 such use, concealment, or abandonment probably will deprive
17 the owner of the property.

18 (2) A person commits the offense of theft when he
19 purposely or knowingly obtains by threat or deception
20 control over property of the owner and:

21 (a) has the purpose of depriving the owner of the
22 property;

23 (b) purposely or knowingly uses, conceals, or abandons
24 the property in such manner as to deprive the owner of the
25 property; or

1 (c) uses, conceals, or abandons the property knowing
2 such use, concealment, or abandonment probably will deprive
3 the owner of the property.

4 (3) A person commits the offense of theft when he
5 purposely or knowingly obtains control over stolen property
6 knowing the property to have been stolen by another and:

7 (a) has the purpose of depriving the owner of the
8 property;

9 (b) purposely or knowingly uses, conceals, or abandons
10 the property in such manner as to deprive the owner of the
11 property; or

12 (c) uses, conceals, or abandons the property knowing
13 such use, concealment, or abandonment probably will deprive
14 the owner of the property.

15 (4) A person commits the offense of theft when he
16 purposely or knowingly obtains or exerts unauthorized
17 control over any part of any public assistance provided
18 under Title 53 by a state or county agency, regardless of
19 the original source of assistance, by means of:

20 (a) a knowingly false statement, representation, or
21 impersonation; or

22 (b) a fraudulent scheme or device.

23 (5) A person commits the offense of theft when he
24 purposely or knowingly obtains or exerts unauthorized
25 control over any part of any benefits provided under Title

1 39, chapters 71 and OR 72, by means of:

2 (a) a knowingly false statement, representation, or
3 impersonation; or

4 (b) deception or other fraudulent action.

5 ~~(5)~~(6) A person convicted of the offense of theft of
6 property not exceeding \$300 in value shall be fined not to
7 exceed \$500 or be imprisoned in the county jail for any term
8 not to exceed 6 months, or both. A person convicted of the
9 offense of theft of property exceeding \$300 in value or
10 theft of any commonly domesticated hoofed animal shall be
11 fined not to exceed \$50,000 or be imprisoned in the state
12 prison for any term not to exceed 10 years, or both.

13 ~~(6)~~(7) Amounts involved in thefts committed pursuant
14 to a common scheme or the same transaction, whether from the
15 same person or several persons, may be aggregated in
16 determining the value of the property."

17 Section 66. Section 19-12-401, MCA, is amended to
18 read:

19 "19-12-401. Eligibility for pension benefits. In order
20 to qualify for participation in the volunteer firefighters'
21 pension plan under 19-12-404, a volunteer firefighter must
22 meet each of the following requirements:

23 (1) (a) To qualify for full participation, he must
24 have completed a total of at least 20 years' service as an
25 active volunteer firefighter and as an active member of a

1 qualified volunteer fire company.

2 (b) If a firefighter is prevented from completing at
3 least 20 years' service by dissolution or discontinuance of
4 his volunteer fire company, personal relocation due to
5 transfer or loss of employment, personal disability, or any
6 other factor beyond his reasonable control, he may qualify
7 for partial participation if he has completed at least 10
8 years' service. In that event, he is eligible for only a
9 proportion of the benefits specified in 19-12-404,
10 determined by multiplying the benefits by a fraction, the
11 numerator of which is the number of years of active service
12 completed and the denominator of which is 20.

13 (c) The years of active service are cumulative and
14 need not be continuous. The service need not be acquired
15 with one single fire company but may be a total of separate
16 periods of active service with different fire companies in
17 different fire districts.

18 (d) Effective March 1, 1965, the annual period of
19 service for the purpose of this chapter is the fiscal year.
20 No fractional part of any year may count toward the service
21 requirement, and to receive credit for any particular year,
22 a volunteer firefighter must serve with one particular
23 volunteer fire company throughout that entire fiscal year.

24 (2) (a) Except as provided in subsection (2)(b), he
25 must have attained the age of 55, but he need not be an

1 active volunteer firefighter or an active member of any
2 volunteer fire company when he reaches that age.

3 (b) An active member of a volunteer fire company whose
4 duty-related injury results in a permanent total disability
5 as defined in 39-71-116(1) is eligible to receive a partial
6 pension regardless of his age calculated as follows:

7 (i) for a member with less than 10 years of service, a
8 pension calculated as provided in subsection (1)(b) in which
9 the numerator equals 10; or

10 (ii) for a member with 10 years or more of service, a
11 pension calculated as provided in subsection (1)(b).

12 (3) During each of the years for which he claims
13 credit under subsection (1), he must have completed a
14 minimum of 30 hours of instruction in matters pertaining to
15 firefighting under a program formulated and supervised by
16 the chief or foreman of his volunteer fire company.

17 (4) Effective July 1, 1965, no volunteer firefighter
18 may receive credit for any year of membership in a volunteer
19 fire company unless, throughout the year:

20 (a) the company maintained firefighting equipment in
21 serviceable condition of a value of \$2,500 or more; and

22 (b) the company or the fire district served by it was
23 rated in class 5, 6, 7, 8, 9, or 10 by the board of fire
24 underwriters for the purpose of fire insurance premium
25 rates.

1 (5) He must have ceased to be an active member of any
2 volunteer fire company, and if he applies for and receives
3 pension benefits hereunder, he will not thereafter be
4 eligible to become an active member of any volunteer fire
5 company."

6 Section 67. Section 39-71-118, MCA, is amended to
7 read:

8 "39-71-118. Employee, worker, and workman defined. (1)
9 The terms "employee", "workman", or "worker" mean:

10 (a) each person in this state, including a contractor
11 other than an independent contractor, who is in the service
12 of an employer, as defined by 39-71-117, under any
13 appointment or contract of hire, expressed or implied, oral
14 or written. The terms include aliens and minors, whether
15 lawfully or unlawfully employed, and all of the elected and
16 appointed paid public officers and officers and members of
17 boards of directors of quasi-public or private corporations
18 while rendering actual service for such corporations for
19 pay. Casual employees as defined by 39-71-116(3) are
20 included as employees if they are not otherwise covered by
21 workers' compensation and if an employer has elected to be
22 bound by the provisions of the compensation law for these
23 casual employments, as provided in 39-71-401(2). Household
24 or domestic service is excluded.

25 (b) a recipient of general relief who is performing

1 work for a county of this state under the provisions of
2 53-3-303 through 53-3-305 and any juvenile performing work
3 under authorization of a district court judge in a
4 delinquency prevention or rehabilitation program;

5 (c) a person receiving on-the-job vocational
6 rehabilitation training or other on-the-job training under a
7 state or federal vocational training program, whether or not
8 under an appointment or contract of hire with an employer as
9 defined in this chapter and whether or not receiving payment
10 from a third party. However, this subsection does not apply
11 to students enrolled in vocational training programs as
12 outlined above while they are on the premises of a public
13 school or community college.

14 (d) students enrolled and in attendance in programs of
15 vocational-technical education approved by the state board
16 of public education at designated postsecondary
17 vocational-technical centers; or

18 (e) an airman or other person employed as a volunteer
19 under 67-2-105.

20 (2) If the employer is a partnership or sole
21 proprietorship, such employer may elect to include as an
22 employee within the provisions of this chapter any member of
23 such partnership or the owner of the sole proprietorship
24 devoting full time to the partnership or proprietorship
25 business. In the event of such election, the employer must

1 serve upon the employer's insurer written notice naming the
2 partners or sole proprietor to be covered, and no partner or
3 sole proprietor shall be deemed an employee within this
4 chapter until such notice has been given. For premium
5 ratemaking and for the determination of weekly wage for
6 weekly compensation benefits, the insurance carrier shall
7 assume a salary or wage of such electing employee to be not
8 less than \$900 a month and not more than 1 1/2 times the
9 average weekly wage as defined in this chapter."

10 NEW SECTION. Section 68. Repealer. Sections
11 39-71-104, 39-71-121, 39-71-122, 39-71-309, 39-71-410,
12 39-71-705 through 39-71-707, 39-71-709, 39-71-738,
13 39-71-914, 39-71-1001, 39-71-1002, 39-71-1005, 39-71-2906,
14 39-71-2908, and 39-72-104, MCA, are repealed.

15 NEW SECTION. Section 69. Extension of authority. Any
16 existing authority of the department of labor and industry
17 and the division of workers' compensation to make rules on
18 the subject of the provisions of this act is extended to the
19 provisions of this act.

20 NEW SECTION. Section 70. Codification instructions.
21 (1) Sections 1 and 4 are intended to be codified as an
22 integral part of Title 39, chapter 71, part 1, and the
23 provisions of Title 39, chapter 71, part 1, apply to
24 sections 1 and 4.

25 (2) SECTIONS 8 AND 52 THROUGH 57 ARE INTENDED TO BE

CODIFIED AS AN INTEGRAL PART OF TITLE 39, CHAPTER 71, AND
THE PROVISIONS OF TITLE 39, CHAPTER 71, APPLY TO SECTIONS 8
AND 52 THROUGH 57.

{2}{3} Sections 7 and 20 are intended to be codified
 as an integral part of Title 39, chapter 71, part 3, and the
 provisions of Title 39, chapter 71, part 3, apply to
 sections 7 and 20.

{3}{4} Section 9 is intended to be codified as an
 integral part of Title 39, chapter 71, part 4, and the
 provisions of Title 39, chapter 71, part 4, apply to section
 9.

{4}{5} Sections 24 and 28 are intended to be codified
 as an integral part of Title 39, chapter 71, part 7, and the
 provisions of Title 39, chapter 71, part 7, apply to
 sections 24 and 28.

{5}{6} Sections 34 and 35 through 50 are intended to
 be codified as an integral part of Title 39, chapter 71,
 part 10, and the provisions of Title 39, chapter 71, part
 10, apply to sections 34 and 35 through 50.

{6}{7} Section 63 is intended to be codified as an
 integral part of Title 39, chapter 71, part 29, and the
 provisions of Title 39, chapter 71, part 29, apply to
 section 63.

NEW SECTION. Section 71. Severability. If a part of
 this act is invalid, all valid parts that are severable from

the invalid part remain in effect. If a part of this act is
 invalid in one or more of its applications, the part remains
 in effect in all valid applications that are severable from
 the invalid applications.

NEW SECTION. Section 72. Applicability. (1) The
 portions--of-this-act-providing-procedures-for-resolution-of
 disputes SECTIONS 8 AND 52 THROUGH 57 apply RETROACTIVELY,
WITHIN THE MEANING OF 1-2-109, to all injuries and diseases,
 regardless of the date of occurrence. WITH RESPECT TO
REHABILITATION DISPUTES, SECTIONS 8 AND 52 THROUGH 57 APPLY
RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, UNLESS THE
DIVISION HAD JURISDICTION OVER THE DISPUTE UNDER THE LAW IN
EFFECT AT THE TIME OF INJURY.

{2}--Sections--417--497--and--507--giving-the-division-of
workers'-compensation--jurisdiction--over--disputes--arising
under---Title---397---chapters---71---and---72,---concerning
rehabilitation7---apply--only--to---injuries---and---diseases
occurring-after-June-307-19877---Disputes-over-rehabilitation
for--injuries--and-diseases-occurring-prior-to-July-17-19877
may--be--brought--before--a--mediator---and---the---workers'-
compensation-court7

{3}{2} The remaining portions of this act apply only
 to injuries, diseases, and events occurring after June 30,
 1987.

NEW SECTION. Section 73. Effective dates. (1) Except

1 as provided in subsection (2), this act is effective July 1,
2 1987.

3 (2) Sections 5, 53, 69, and this section are effective
4 on passage and approval.

-End-